

COMPLIANCE GUIDEBOOK



Families First Coronavirus Response Act

INTRODUCTION

Late on March 18, President Trump signed into law the Families First Coronavirus Response Act (FFCRA), which is aimed at containing the widening effects of COVID-19. Among other things, the FFCRA creates several significant new leave and sick pay obligations for covered employers.

OVERVIEW

- The FFCRA provides new employee leave benefits, including emergency paid sick and family leave for employees who work for employers with **fewer than 500 employees**.
- For all employees:
 - **Two weeks** of paid sick time at the employee's **regular rate of pay** where the employee is unable to work because the **employee is quarantined**.
 - **Two weeks** of paid sick time at **two-thirds the employee's regular rate** of pay because the employee is unable to work because of a need to **care for an individual** subject to quarantine.
- For those employed for at least 30 days:
 - Up to an **additional 10 weeks** of paid family leave at **two-thirds the employee's regular rate** of pay when an employee is unable to work due to a bona fide need for leave to care for a child whose **school or child care provider is closed** or unavailable for reasons related to COVID-19.

These rules will apply **starting April 2, 2020** through December 31, 2020.



EMERGENCY PAID SICK LEAVE

The FFCRA creates the *Emergency Paid Sick Leave Act* which requires employers to provide paid sick time to employees who are unable to work due to the COVID-19 outbreak.

WHICH EMPLOYERS MUST COMPLY?

Employers with **fewer than 500 employees** are covered.

WHICH IS ELIGIBLE?

All **full and part-time employees** are eligible, regardless of how long they have been employed.

HOW MUCH LEAVE?

- Full-time employees can take up to 2-weeks of paid leave.
- Part-time employees can take paid leave equal to the average number of hours that the employee works over a 2-week period.

Employees ***can not be required*** to use other paid time off before using emergency paid sick leave under this law.





WHAT ARE ELIGIBLE REASONS FOR PAID SICK LEAVE?

As related to the COVID-19 outbreak, employees can take paid leave for the reasons listed below.



When quarantined or isolated subject to federal, state, or local quarantine/isolation order

REGULAR RATE OF PAY
\$511 MAX
PER DAY
2 WEEKS DURATION



When advised by a health care provider to self-quarantine

REGULAR RATE OF PAY
\$511 MAX
PER DAY
2 WEEKS DURATION



When experiencing symptoms and seeking medical diagnosis

REGULAR RATE OF PAY
\$511 MAX
PER DAY
2 WEEKS DURATION



When caring for an individual when quarantined or advised by health care provider to self-quarantine

2/3 REGULAR RATE OF PAY
\$200 MAX
PER DAY
2 WEEKS DURATION



When caring for a child whose school or place of care is closed (or child care provider is unavailable)

REGULAR RATE OF PAY
\$200 MAX
PER DAY
12 WEEKS DURATION*



When experiencing any other substantially-similar condition specified by the Secretary of HHS in consultation with the Secretaries of Labor and Treasury.

2/3 REGULAR RATE OF PAY
\$200 MAX
PER DAY
2 WEEKS DURATION

* First 2-weeks (10 days) unpaid



EMERGENCY FMLA LEAVE

The FFCRA also creates the *Emergency Family and Medical Leave Expansion Act* which will give eligible employees the right to take leave from their jobs for certain qualifying needs.

WHICH EMPLOYERS MUST COMPLY?

Employers with **fewer than 500 employees** are considered covered under this law.

- Healthcare providers and emergency responders can be excluded.
- The Department of Labor may exempt employers with fewer than 50 employees if coverage would jeopardize the employer's ongoing viability.

WHO IS ELIGIBLE?

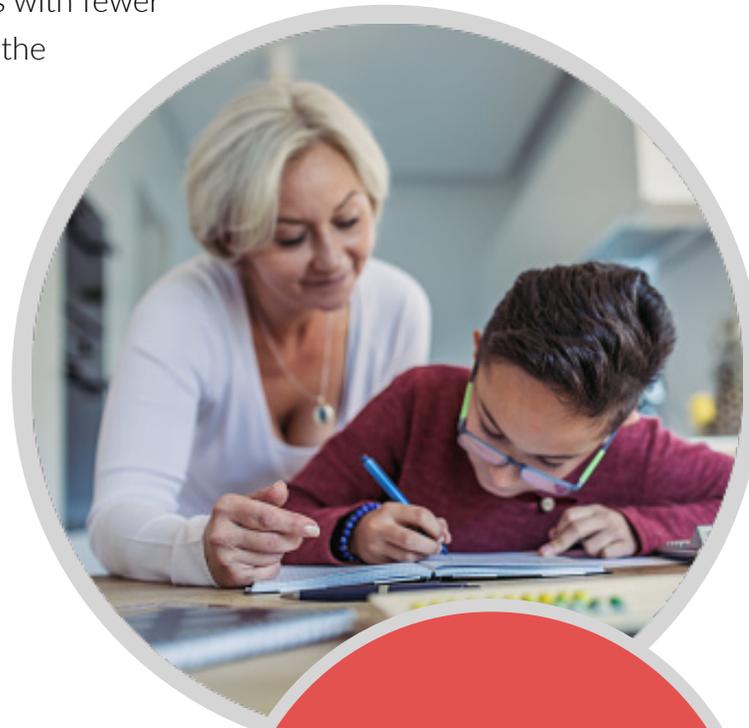
All full and part-time employees that have been employed **for at least 30 days**.

HOW MUCH LEAVE?

Employees can take **up to 12 weeks** of leave for a qualifying reason.

WHAT QUALIFIES?

Employees will qualify for leave when they are unable to work (including telework) because they **need to care for their minor child whose school or place of care has been closed**, or whose child care provider is unavailable, due to a COVID-19 emergency declared by a Federal, State, or local authority.



IMPORTANT:

The original version of the bill allowing for leave due to an employee exhibiting symptoms of COVID-19 were **removed** from the final legislation.



IS EMERGENCY FMLA LEAVE PAID?

The first 2-weeks (10 days) can be **unpaid**. The employee may elect to use any accrued vacation, personal, medical or sick leave during this time.

For leave **after the first 10 days (2 weeks)**, employees are entitled to **2/3 of their regular pay**, not to exceed \$200 per day or \$10,000 total.

First 2-Weeks (10 days)

Unpaid

After 2-Weeks (10 Days)

Paid 2/3 of their regular pay,
not to exceed \$200 per day or \$10,000 total.

Employees may also qualify for emergency paid sick leave during the first 2-week unpaid period IF they qualify under additional qualifying reasons listed on page 3.

IS EMPLOYMENT GUARANTEED UPON RETURN?

Employees taking leave would be entitled to job restoration. The same reinstatement provisions apply as apply under the traditional FMLA.

However, restoration to position does not apply to employers with fewer than 25 employees if certain conditions are met:

1. The **job no longer exists** because of changes affecting employment caused by an economic downturn or other operating conditions that affect employment caused by a public health emergency; **and**
2. The employer makes **reasonable efforts** to return the employee to an equivalent position, and makes efforts to contact a displaced employee if anything comes up within a year of when they would have returned to work.



PAYROLL TAX CREDIT

Employers will be provided tax relief for amounts paid to employees for Paid Sick Leave and FMLA leave.

- To take immediate advantage of the paid leave credits, businesses can **retain and access funds** that they would otherwise pay to the IRS in payroll taxes.
- If those amounts are not sufficient to cover the cost of paid leave, employers can seek an **expedited advance from the IRS** by submitting a streamlined claim form.

SICK LEAVE TAX CREDIT

An emergency paid sick leave quarterly payroll tax credit may be claimed by employers equal to 100 percent of the amount of sick leave wages paid to employees per payment and duration schedule outlined in the FFCRA.

FMLA LEAVE EXTENSION TAX CREDIT

For those employers who provide public health emergency FMLA leave wages, a separate payroll tax provision allows a 100% credit against the employer's share of the payroll tax for each employee, capped at \$200 per day (\$10,000 total) per employee.

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268.81
625.94
486.36
275.48
264.85
216.28
119.
261.8



FURTHER INSIGHTS

HEALTH BENEFITS CONTINUATION

The FFCRA did not change the FMLA's health benefit continuation provisions, which requires an employer to continue group health coverage for an employee on FMLA leave.

Whether an employee's other benefits will continue if the employee takes leave for a public health emergency depends on the terms of the benefit plan documents and leave policies.

Whether an employee's benefits will continue during the paid sick leave provided under the FFCRA also depends on the employer's benefit plan documents and leave policies, so employers should check their benefit plan documents and leave policies.

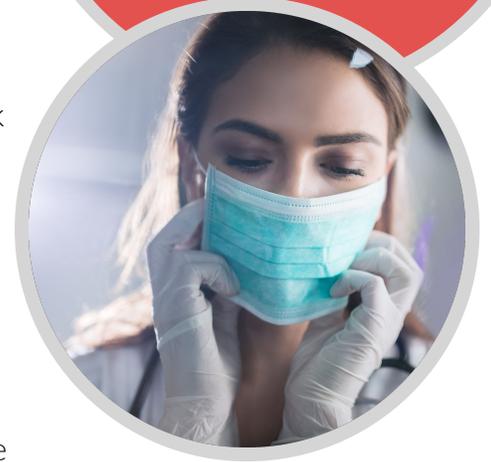
PENALTIES AND ENFORCEMENT

Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA.

- Employers in violation of the first two weeks' paid sick time or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement of the Fair Labor Standards Act.
- Employers in violation of the provisions providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or child care provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act.

COVID-19 TESTING:

The act requires all medical plans to cover diagnostic testing-related services for COVID-19 at 100 percent without any deductibles or co-pays.





APPENDIX A: FFCRA Pay and Leave Matrix

Summary Diagram of the Paid Leave Available to Employees Under this Act.

Qualifying Reason for Leave

Pay and Duration

- Employee is subject to a **government quarantine** or isolation order.
- Employee has been advised by a health care provider to **self-quarantine**.
- Employee is **experiencing symptoms** and is seeking a medical diagnosis.

Pay:

- Regular Rate of Pay
- Up to \$511 a day (\$5,110 max over 2-weeks)

Duration:

- Full-time EEs can take up to 2 weeks (80 hours)
- Part-time EEs can take paid leave equal to the average number of hours that the employee works over a 2-week period.

- Employee is **caring for an individual** that is subject to government quarantine or isolation order; or been advised by a health care provider to self-quarantine.
- Employee is experiencing any other **substantially-similar condition** specified by the Secretary of HHS, in consultation with the Secretaries of Labor and Treasury.

Pay:

- **2/3 Regular Rate of Pay**
- Up to \$200 a day (\$2,000 max over 2-weeks).

Duration:

- Full-time EEs can take up to 2 weeks (80 hours)
- Part-time EEs can take paid leave equal to the average number of hours that the employee works over a 2-week period.

- Employee is caring for a child whose **school or place of care is closed** (or child care provider is unavailable) for reasons related to COVID-19.

Pay:

- 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher
- Up to \$200 per day and \$12,000 in total (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

Duration:

- Full-time EEs can take up to 12-weeks (40 hrs/wk)
- Part-time EEs can take leave for the number of hours that the employee is normally scheduled to work over that period.

APPENDIX B: FFCRA Common Questions

Below are various questions we have received from Emerge Apps' clients.

1. **I have more than 500 employees, am I required to offer emergency paid sick leave or emergency FMLA leave as outlined by the FFCRA?**

No. The FFCRA only applies to employers with less than 500 employees.

2. **Our company already offers two weeks paid sick leave, do we need to offer an additional two weeks of paid leave?**

Yes. The FFCRA grants eligible employees paid sick leave “in addition to” any preexisting leave accrued.

3. **Can I require my employees to first use their PTO before providing paid sick time?**

No. The FFCRA specifically prohibits employers from requiring employees to exhaust their existing PTO before using any new paid sick leave.

4. **My employees work variable hours, how do I calculate paid sick leave for my hourly employees?**

Employers must look at the preceding six-month period to determine the employee's average hours.

5. **If the employee's employment is terminated, do I have to pay them for paid sick time that is unused?**

No. The FFCRA does not require financial or other reimbursement to an employee upon the employee's termination, resignation, retirement, or other separation from employment for unused paid sick time under this Act.

6. **Do I have to pay employees for emergency paid sick leave if employees are unable to work because I have decided to close my business or made a business determination that employees should not be working?**

No. If an employer makes a decision to close or cancel work shifts for business reasons (i.e. lack of work), emergency paid sick leave will not have to be paid.

7. **Do I have to provide FMLA leave if employees are unable to work because I have decided to close my business or made a business determination that employees should not be working?**

No. If an employer makes a decision to close the business, the employee will not be entitled to COVID-19 Qualifying FMLA leave.

8. **I have an employee that has already taken 12 weeks of FMLA leave this year, are they eligible for an additional 12 weeks of leave to stay home with their kids?**

No. The FFCRA does not expand an eligible employee's FMLA leave entitlement to greater than 12 workweeks during any 12-month period.

9. **Can emergency FMLA leave run concurrently with emergency paid sick leave?**

If available, the paid sick leave may be used to cover the first 10 days of FMLA leave for COVID-19.

10. **If employees are on FMLA leave for non-COVID-19 reasons, do I now have to pay them?**

No. The 2/3 payment requirement only applies to emergency FMLA leave related to COVID-19.