

GUIDE FOR EMPLOYERS:

Families First Coronavirus Response Act (FFCRA)

Release Date: March 25, 2020

Key Points

- **FFCRA goes into effect on April 1, 2020.**
- **Free COVID-19 Testing:** All health care carriers must pay 100% of testing for Coronavirus and cannot implement prior-authorization requirements for Coronavirus testing.
- **Emergency Sick Leave and Emergency Expanded FMLA Leave (aka Child Care Leave):**
Employees of companies with less than 500 employees are entitled to take:
 - **Sick Leave:** 80 hours of sick leave, regardless of whether or not the employee has accrued sick leave.
 - **Child Care Leave:** 12 weeks of job-protected leave, a combination of paid and unpaid leave.

How it Works

	PAID SICK LEAVE	PAID CHILD CARE LEAVE
Who is Covered?	<ul style="list-style-type: none"> • Employees employed by a company with less than 500 employees. • The Employee is currently employed (there is no required minimum days of employment) 	<ul style="list-style-type: none"> • Employees employed by a company less than 500 employees (this is different from the FMLA's usual threshold of 50 or more employees) • The Employee worked for the company for at least 30 days before the start of leave.
Who is not Covered?	<ul style="list-style-type: none"> • Employee is employed by a company with 500 employees or more. • Exemptions: Employers of health care providers or emergency responders may choose not to provide paid sick leave to such employees. • Possible future exemption for health care providers or small businesses, at the direction of the US Secretary of Labor. 	<ul style="list-style-type: none"> • Employees employed by a company with 500 employees or more. • Exemptions: Employers of health care providers or emergency responders may choose not to provide paid sick leave to such employees. Possible future exemption for small businesses if such leave jeopardizes the viability of the business at the direction of the US Secretary of Labor.

<p>How does it work?</p>	<ul style="list-style-type: none"> • Covered Employee may take up to 80 hours (pro-rated for part-time employees) of paid sick leave if employee is unable to work (or telework) for any of the five reasons: <ul style="list-style-type: none"> ○ Employee is subject to a federal, state, or local quarantine, or ordered by a health care provider to self-quarantine (employee entitled to its full salary, but capped at \$511 per day and \$5,110 total) ○ Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis (employee entitled to its full salary, but capped at \$511 per day and \$5,110 total) ○ Employee is caring for an individual who must self-quarantine (employee is entitled to $\frac{2}{3}$ of the employee's pay but capped at \$200 per day and \$2,000 total) ○ Employee is caring for a child under 18 years old because the child's school or child care is unavailable due to COVID-19 (employee is entitled to $\frac{2}{3}$ of the employee's pay but capped at \$200 per day and \$2,000 total) ○ Employee is experiencing "substantially similar conditions" specified by the Secretary of Health and Human Services". (employee is entitled to $\frac{2}{3}$ of the employee's pay but capped at \$200 per day and \$2,000 total) • Employers cannot require employees to use other paid leave before using paid COVID-19 sick leave. • COVID-19 sick leave is in addition to any existing sick leave policy provided by employers as of March 18, 2020. Employer cannot change sick leave policy because of this Act. 	<ul style="list-style-type: none"> • Covered Employee may take up to 12 weeks of job-protected leave if the employee is unable to work (or telework) because: <ul style="list-style-type: none"> ○ Employee must care for the employee's child under the age of 18 years old because the child's school or child care facility/program has closed due to COVID-19 • The first ten (10) days of such leave will be unpaid, unless the employee chooses to substitute accrued vacation, personal leave or sick leave. The employer cannot require an employee to do so. The employee can also elect to use 80 hours of paid COVID-19 sick leave. • After the first 10 days, employees are entitled to paid child care leave for the next 10 weeks at two-thirds ($\frac{2}{3}$) the employee's pay rate, but capped at \$200 per day, up to \$10,000 total. • Part-time employees must be paid based on the average number of hours worked for the six months prior to taking this leave. Employees who have not worked for at least six months prior to taking this leave may receive an amount equal to their reasonable expectation at hiring of the average number of hours the employee would ordinarily be scheduled to work.
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	<ul style="list-style-type: none"> Sick leave will not carry over to 2021. 	
What is the cost for paid leave?	<p>Employers can retain and access funds they would otherwise pay to the IRS in payroll taxes (employee's share of Social Security and Medicare taxes and the employer's share of Social Security and Medicare taxes for all employees).</p> <p>Ex: If an employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, the employer could use up to \$5,000 of the \$8,000 in taxes it was going to deposit for the sick leave benefits. The employer would be required to deposit the remaining \$3,000 on its next regular deposit date.</p> <p>If there is not enough payroll taxes to cover the cost of sick leave, employers will be able to file a request for an accelerated payment from the IRS, which expects to process such requests in two weeks or less. The IRS has stated that it will provide more information on how to file such a request during the week of 3/23/20.</p> <p>Ex: If an employer paid \$5,000 in sick leave and is required to deposit \$6,000 in payroll taxes, the employer can use the entire \$5,000 of taxes toward the sick leave benefit and file a request for an accelerated credit for the remaining \$1,000.</p>	<p>Employers can retain and access funds they would otherwise pay to the IRS in payroll taxes (employee's share of Social Security and Medicare taxes and the employer's share of Social Security and Medicare taxes for all employees).</p> <p>Ex: If an employer paid \$5,000 in leave and is otherwise required to deposit \$8,000 in payroll taxes, the employer could use up to \$5,000 of the \$8,000 in taxes it was going to deposit for the child care benefits. The employer would be required to deposit the remaining \$3,000 on its next regular deposit date.</p> <p>If there is not enough payroll taxes to cover the cost of child care leave, employers will be able to file a request for an accelerated payment from the IRS, which expects to process such requests in two weeks or less. The IRS has stated that it will provide more information on how to file such a request during the week of 3/23/20.</p> <p>Ex: If an employer paid \$10,000 in leave and is required to deposit \$8,000 in payroll taxes, the employer can use the entire \$8,000 of taxes toward the child care benefit and file a request for an accelerated credit for the remaining \$2,000.</p>
What is the Return to Work policy?	<p>Employer with 25 or more employees must restore employee to the same or equivalent position</p> <p>Employer with less than 25 employees do not have to restore employee if certain conditions are met (e.g., position no longer exists because of economic conditions) and employer made reasonable efforts to restore the employee for a year.</p>	<p>Employer with 25 or more employees must restore employee to the same or equivalent position.</p> <p>Employer with less than 25 employees do not have to restore employee if certain conditions are met (e.g., position no longer exists because of economic conditions) and employer made reasonable efforts to restore the employee for a year.</p>

Any other regulatory requirements?	<p>US DOL published its FFCRA notice (informing employees of their rights to emergency paid sick leave) on 3/25/20. Employers must post this notice beginning 3/26/20 in conspicuous places at work. In a situation where most employees are working remotely, employers can email the notice and post in a conspicuous place upon resumption of normal business operations.</p>	<p>Keep in mind this is an extension of FMLA, so traditional FMLA requirements such as extending health coverage while on FMLA is required.</p>
What does the temporary 30-day non-enforcement policy mean?	<p>On 3/25/20, the Department of Labor (DOL) issued its guidance stating that from 3/18/20 (day the Act was signed into law) until 4/17/20, it will not bring an enforcement action against any employer for violations of the Act as long as the employer has acted “reasonably and in good faith” to comply with the Act.</p>	<p>On 3/25/20, the Department of Labor (DOL) issued its guidance stating that from 3/18/20 (day the Act was signed into law) until 4/17/20, it will not bring an enforcement action against any employer for violations of the Act as long as the employer has acted “reasonably and in good faith” to comply with the Act.</p>