

## GUIDE & FAQs FOR EMPLOYERS:

# Families First Coronavirus Response Act (FFCRA)

Release Date: March 29, 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
<b>Who is Covered?</b>	<ul style="list-style-type: none"> <li>• Employees employed by a company with less than 500 employees.</li> <li>• The Employee is currently employed (there is no required minimum days of employment)</li> </ul>	<ul style="list-style-type: none"> <li>• Employees employed by a company less than 500 employees (this is different from the FMLA's usual threshold of 50 or more employees)</li> <li>• The Employee worked for the company for at least 30 days before the start of leave.</li> <li>• Any employee that was laid off on or after March 1, 2020 and is re-hired, is deemed to have worked for the company for at least 30 days if s/he worked for the employer for at least 30 of the last 60 days.</li> </ul>

	<b>PAID SICK LEAVE</b>	<b>PAID CHILD CARE LEAVE</b>
<b>Who is not Covered?</b>	<ul style="list-style-type: none"> <li>• Employee is employed by a company with 500 employees or more.</li> <li>• Employers of health care providers or emergency responders may choose not to provide paid sick leave to such employees. (See the bottom of this chart for definition of “health care providers” and “emergency responders”).</li> <li>• Small business exception: If the employer has less than 50 employees and paid sick leave is requested because the employee’s child’s school/place of care is closed because of COVID-19 related reasons, the employer may choose not to provide such sick leave if an officer of the company determines one of the following conditions would occur: <ul style="list-style-type: none"> <li>○ Providing such leave will result in the company’s expenses and financial obligations exceeding available business revenues and cause the company to operate at a minimal capacity;</li> <li>○ The absence of the employee(s) requesting such leave would entail a substantial risk to the financial health or operational capabilities of the company because of their specialized skills, knowledge of the business, or responsibilities; or</li> <li>○ There are not enough workers able, willing and qualified and who will be available at the time and place needed, to perform the responsibilities of the employee(s) requesting such leave and those responsibilities are needed for the company to operate at a minimal capacity.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Employees employed by a company with 500 employees or more.</li> <li>• Employers of health care providers or emergency responders may choose not to provide paid child care leave to such employees. (See the bottom of this chart for definition of “health care providers” and “emergency responders”).</li> <li>• Small business exception: If the employer (including a religion or nonprofit org) has less than 50 employees and paid child care leave is requested because the employee’s child’s school/place of care is closed because of COVID-19 related reasons, the employer may choose not to provide such leave if an officer of the company determines one of the following conditions would occur: <ul style="list-style-type: none"> <li>○ Providing such leave will result in the company’s expenses and financial obligations exceeding available business revenues and cause the company to operate at a minimal capacity;</li> <li>○ The absence of the employee(s) requesting such leave would entail a substantial risk to the financial health or operational capabilities of the company because of their specialized skills, knowledge of the business, or responsibilities; or</li> <li>○ There are not enough workers able, willing and qualified and who will be available at the time and place needed, to perform the responsibilities of the employee(s) requesting such leave and those responsibilities are needed for the company to operate at a minimal capacity.</li> </ul> </li> </ul>

<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>How does it work?</b></p>	<ul style="list-style-type: none"> <li>• 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"> <li>○ Employee is subject to a federal, state, or local quarantine, or ordered by a health care provider to <b>self-quarantine</b> (employee entitled to its full salary, but capped at \$511 per day and \$5,110 total)</li> <li>○ Employee is experiencing <b>symptoms of COVID-19 and seeking a medical diagnosis</b> (employee entitled to its full salary, but capped at \$511 per day and \$5,110 total)</li> <li>○ Employee is <b>caring for an individual who must self-quarantine</b> (employee is entitled to <math>\frac{2}{3}</math> of the employee's pay but capped at \$200 per day and \$2,000 total)</li> <li>○ Employee is <b>caring for a child</b> under 18 years old <b>because the child's school or child care is unavailable due to COVID-19</b> (employee is entitled to <math>\frac{2}{3}</math> of the employee's pay but capped at \$200 per day and \$2,000 total)</li> <li>○ Employee is <b>experiencing "substantially similar conditions</b> specified by the Secretary of Health and Human Services". (employee is entitled to <math>\frac{2}{3}</math> of the employee's pay but capped at \$200 per day and \$2,000 total)</li> </ul> </li> <li>• Employers cannot require employees to use other paid leave before using paid COVID-19 sick leave.</li> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• 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"> <li>○ 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</li> </ul> </li> <li>• 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.</li> <li>• After the first 10 days, employees are entitled to paid child care leave for the next 10 weeks at two-thirds (<math>\frac{2}{3}</math>) the employee's pay rate, but capped at \$200 per day, up to \$10,000 total.</li> <li>• 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.</li> </ul>
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	<ul style="list-style-type: none"> <li>Sick leave will not carry over to 2021.</li> </ul>	
<b>What is the cost for paid leave?</b>	<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>
<b>What is the Return to Work policy?</b>	<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>

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<b>Any other regulatory requirements?</b>	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.	Keep in mind this is an extension of FMLA, so traditional FMLA requirements such as extending health coverage while on FMLA is required.
<b>What is the definition of a Health Care Provider and Emergency Responder?</b>	<p>A health care provider is:</p> <ol style="list-style-type: none"> <li>anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any other similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions;</li> <li>any individual employed by an entity that contracts with any of the entities listed in (1) to provide services or to maintain the operation of the facility;</li> <li>anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments; and</li> <li>any individual that the Governor determines is a health care provider necessary for the state’s response to COVID-19.</li> </ol>	<p>A health care provider is:</p> <ol style="list-style-type: none"> <li>anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any other similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions;</li> <li>any individual employed by an entity that contracts with any of the entities listed in (1) to provide services or to maintain the operation of the facility;</li> <li>anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments; and</li> <li>any individual that the Governor determines is a health care provider necessary for the state’s response to COVID-19.</li> </ol>

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<b>What is the definition of a Health Care Provider and Emergency Responder? (cont.)</b>	<p>An emergency responder is:</p> <ol style="list-style-type: none"> <li>1. an employee who is necessary for the transport, care, health care, comfort and nutrition of such patients, or whose services are needed to limit the spread of COVID-19;</li> <li>2. military, national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel and those with skills or training in operating specialized equipment or skills needed to provide aid in a declared emergency including those who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility; and</li> <li>3. any individual that the Governor determines is an emergency responder necessary for the state's response to COVID-19.</li> </ol>	<p>An emergency responder is:</p> <ol style="list-style-type: none"> <li>1. an employee who is necessary for the transport, care, health care, comfort and nutrition of such patients, or whose services are needed to limit the spread of COVID-19;</li> <li>2. military, national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel and those with skills or training in operating specialized equipment or skills needed to provide aid in a declared emergency including those who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility; and</li> <li>3. any individual that the Governor determines is an emergency responder necessary for the state's response to COVID-19.</li> </ol>
<b>What does the temporary 30-day non-enforcement policy mean?</b>	<ol style="list-style-type: none"> <li>4. 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.</li> </ol>	<ol style="list-style-type: none"> <li>4. 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.</li> </ol>

## FAQs

**Q: Who is a “health care provider” for purposes of determining individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave?**

A: For purposes of paid sick and child care leave, “health care provider” is a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

**Q: Can more than one parent or guardian take paid sick leave or paid child care leave at the same time to care for their child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons?**

A: Generally, an employee should not take paid sick or child care leave if a co-parent or co-guardian is available to take care of the employee’s child. An employee may take paid sick or child care leave only when the employee needs to and is actually caring for their child and that employee is not able to work or telework as a result of providing such care.

**Q: Is an employee who has COVID-19 symptoms and decides to self-quarantine for two weeks but not seek a medical diagnosis or the advice of a health care provider during those two weeks entitled to paid sick leave?**

A: Generally no. The employee is not entitled to paid sick leave if the employee unilaterally decides to self-quarantine without seeking a medical diagnosis or the advice of a health care provider. If the employee tests positive for COVID-19 or advised by a health care provider to self-quarantine, then the employee may continue to take paid sick leave. Note also that if the employee has been teleworking and is able to continue teleworking while waiting for test results or during an advised self-quarantine period, the employee is not entitled to paid sick leave.

**Q: Can an employee take paid sick leave to care for anyone who is subject to a quarantine or isolation order?**

A: An employee can take paid sick leave to care for an individual who, as a result of being subject to a quarantine or isolation order, is unable to care for themselves and depends on the employee for care, and providing such care prevents the employee from working or teleworking. An “individual” includes an immediate family member, someone who regularly resides in the employee’s home or someone with whom the employee has a relationship that creates an expectation that the employee would provide care for in the event of an ordered or advised quarantine or self-quarantine.

**Q: For purposes of paid sick or child care leave, what is a Federal, State or local quarantine related to COVID-19?**

A: For purposes of the FFCRA, a Federal, State, or local quarantine order includes quarantine or isolation orders, as well as shelter-in-place or stay-at-home orders, issued by any Federal, State, or local government authority that causes an employee to be unable to work or telework even though an employer has work that could be performed but for the order. The Department of Labor offers the following example:

*An employee subject to one of these orders may not take paid sick leave where the employer does not have work for the employee. This is because the employee would be unable to work even if he or she were not required to comply with the quarantine or isolation order. For example, if a coffee shop closes temporarily or indefinitely due to a downturn in business related to COVID-19, it would no longer have any work for its employees. A cashier previously employed at the coffee shop who is subject to a stay-at-home order would not be able to work even if he were not required to stay at home. As such, he may not take paid sick leave because his inability to work is not due to his need to comply with the stay-at-home order, but rather due to the closure of his place of employment. This analysis holds even if the closure of the coffee shop was substantially caused by a stay-at-home order. If the coffee shop closed due to its customers being required to stay at home, the reason for the cashier being unable to work would be because those customers were subject to the stay-at-home order, not because the cashier himself was subject to the order. Similarly, if the order forced the coffee shop to close, the reason for the cashier being unable to work would be because the coffee shop was subject to the order, not because the cashier himself was subject to the order.*