



Everything You Need to Know About

# FFCRA PAID LEAVE

*ProService* HAWAII



## Introducing FFCRA for 2021

In response to the pandemic, an emergency coronavirus bill called the Families First Coronavirus Response Act ( or FFCRA) was signed into law in March 2020. The purpose of FFCRA was to expand FMLA and grant employees **Emergency Paid Sick Leave (EPSL) and Emergency Family and Medical Leave (EFML)** for specified reasons related to COVID-19.

While initial employer obligations to provide FFCRA paid sick and family leave ended on December 31, 2020, the new American Rescue Plan Act allows employers to *voluntarily* provide FFCRA paid leave benefits beginning April 1, 2021 through to September 30, 2021 and receive tax credits for such paid leave as well.

Keep reading to learn more about the new rules and what you need to know about FFCRA in 2021.



## Two Types of Leave: **Paid Sick Leave and Family & Medical Leave**

### **#1. Emergency Paid Sick Leave (EPSL)**

Under FFCRA, eligible employees can get up to 10 days/80 hours for Paid Sick leave (or the number of hours usually worked in a two-week period for part-time employees) for qualifying reasons mentioned below. Thanks to the American Rescue Plan, this day/hour limit resets starting April 1, 2021. This means that employees who have previously exhausted their entitlement to Emergency Paid Sick Leave now have another 10-days/80-hours for use.

Generally, leave taken for reasons related to one's own care is capped at \$511 per day. Leave taken for other qualifying reasons is paid out at two-thirds the employee's regular pay (or applicable minimum wage, whichever is higher), up to a cap of \$200 per day.

## #2. Emergency Family & Medical Leave (EFML)

Under FFCRA, eligible employees can now get a *full 12 weeks* of paid leave\* for qualifying reasons mentioned below starting April 1, 2021. This represents a major change that came with the American Rescue Plan Act, which eliminated the previous FFCRA requirement that the first two weeks of EFML be unpaid.

Leave taken for other qualifying reasons is paid out at two-thirds the employee's regular pay (or applicable minimum wage, whichever is higher), up to a cap of \$200 per day and a total cap of \$12,000 (up from \$10,000).

*\* Under FFCRA, EFML offers 12 weeks of paid leave within a calendar year. An employee can get the full 12 weeks if they have not previously used any EFML or other leave under the Family and Medical Leave Act.*

### Reasons for FFCRA Leave

The American Rescue Plan has expanded the qualifying reasons for paid leave (both Emergency Paid Sick and Emergency Family & Medical Leave). Leave is FFCRA qualified when an employee is unable to work (remotely or otherwise) for any of the following eight reasons:

1. **\*New\*** Is getting tested or awaiting test results or medical diagnosis for COVID-19 (provided that the employee was exposed to COVID-19 or the test/diagnosis was requested by the employer)
2. **\*New\*** Is getting the vaccine
3. **\*New\*** Is recovering from an illness or medical condition associated with getting the vaccine
4. Is experiencing symptoms of COVID-19 and seeking a medical diagnosis
5. Is subject to a federal, state, or local quarantine, or ordered by a health care provider to self-quarantine
6. Is caring for an individual who must self-quarantine
7. Is caring for a child under 18 years old because the child's school or child care is unavailable due to COVID-19
8. Is experiencing any other "substantially similar conditions specified by the Secretary of Health and Human Services"

The qualifying reasons for Emergency Paid Sick Leave and Emergency Family & Medical Leave are now the same. This was an important change brought about by the American Rescue Act. Prior to this, employees could only use EFML if they needed time off to care for a child whose school or daycare was closed due to COVID-19 related reasons.

Now that qualifying reasons are the same, an employee could potentially take up to a total of 14 weeks of paid FFCRA leave.

*For example: An employee that qualifies for EPSL and needs leave beyond the 10-day/80-hour entitlement could take up to an additional 12 weeks of EFML (assuming they have not previously used any EFML or time off under the FMLA).*

## **Tax Credits for Providing FFCRA Leave**

The American Rescue Plan Act does NOT renew the requirement that employers provide employees with paid or unpaid FFCRA. However, it does extend and expand the availability of payroll tax credits if businesses want to *voluntarily* provide paid leave under FFCA.

Starting April 1, 2021, the following rules apply:

- **Who is eligible?** Businesses with <500 employees who voluntarily provide qualifying paid leave under FFCRA
- **What wages qualify?** Qualified wages paid within the specific six month period from April 1, 2021 to September 30, 2021.
- **How much is the credit?** The credit is 100% of the FFCRA leave benefit, so up to \$511/day EPSL or \$200/day for EPSL (depending on the qualifying reason) and up to \$200/day for EFML.



## What Does FFCRA Mean for My Business?

With this new benefit comes a big question for employers: *Should I extend these FFCRA leave benefits to my employees?*

At ProService Hawaii, we think it's worth considering, especially given the benefit of providing paid time off to encourage employees to get vaccinated, or to support COVID-related absences due to illness or exposure. And with the extended tax credit, there's a financial incentive to do so also.

### Non-Discrimination Rules

If you decide to offer FFCRA leave, you should be aware that the American Rescue Plan has added new non-discrimination rules that disqualify employers from receiving a tax credit if the rules are violated. The purpose of this new provision is to ensure the FFCRA benefits are offered equally to all employees.

For example, an employer offering leave benefits under the FFCRA will be disqualified from receiving a payroll tax credit if they a) fail to comply with the FFCRA, including its anti-retaliation provisions or b) discriminate in favor of highly compensated employees, full-time employees, or employees with greater seniority.

# Frequently-Asked-Questions

**Q: Who is a “health care provider” for purposes of determining individuals who can be relied on to give advice to others to self-quarantine due to concerns related to COVID-19? (See How Does FFCRA work?)**

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: What is a “Federal, State or local quarantine related to COVID-19” for the purpose of paid sick or child leave?**

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 COVID19, 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.

## Testing & Quarantine Scenarios

**Q: Is an employee entitled to FFCRA if they're seeking a voluntary test without concern of potential exposure to COVID-19?**

A: No, voluntary testing and waiting for diagnosis without known exposure or without a recommendation of a physician does not qualify an employee for FFCRA sick leave.

**Q: Is an employee entitled to FFCRA paid sick leave if they decide to self-quarantine after self-diagnosing symptoms but do not seek a medical diagnosis or the advice of a health care provider?**

A: 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 healthcare 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.

**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.*

## Back to School Scenarios

**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 coguardian 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: Can an employee take FFCRA leave for the time period that his/her child is at-home distance learning?**

A: It depends on the circumstance. FFCRA leave may be available IF the school is operating at a reduced capacity to comply with social distancing guidelines resulting in the employee's child having no choice but to receive distance learning. The U.S. DOL has indicated that FFCRA leave is available on the child's remote-learning days provided the employee needs the leave to actually care for their child during that time and no other suitable person is available to do so.

FFCRA leave is NOT available IF the employee chooses to keep their child at home for distance learning even though the school plans to reopen. If in-person learning is available, the school is not considered closed or partially closed.



## How ProService Helps Local Businesses Navigate the Ups & Downs

If you're like many businesses, it's complicated, overwhelming, time consuming and costly to take care of your people and focus on building your business, especially during a pandemic. That's where we come in. We've been providing Hawaii employers with comprehensive human resources services for over 20 years.

When you choose a partner like ProService Hawaii, you don't just get a "human resources services" or some do-it-yourself software. You get an actual team of certified, local HR professionals at a fraction of the cost of a full-time hire.

### **And not just any team. A team who...**

- **Knows Hawaii** business inside and out to help you navigate uncertainty
- **Helps save you thousands** on rich benefits packages that attract top talent
- **Ensures you're compliant** with all local, federal and COVID-19 related laws
- **Provides free training** to keep your employees and customers safe
- **Takes care of everything HR-related** so you can free up internal resources

# Everything you need from one partner

| <b>Payroll</b>  | <b>Business Insurance</b>  | <b>Worksite Safety</b>  |
|---|--|---|
| Pay your team easily. We'll take care of certified payroll, benefits deductions and tax withholdings for you.         | Protect your bottom line with affordable healthcare, workers' comp and TDI coverage, only at ProService.       | Keep your team safe and accident free with live or on-demand employee training at no extra costs.                   |
| <b>Risk Management</b>  | <b>Labor Reporting</b>   | <b>Human Resources</b>  |
| Stay out of trouble with a team of experts that advocate for your needs and shield your business from the unexpected. | Easily manage labor costs with instant reporting that help manage teams and projects on time and under budget. | Check off tedious HR and employee tasks from your to-do list. From hire to retire, we do the heavy lifting for you. |



*"At ProService, I have a healthcare team. And a payroll team. And a legal team. And a training team. And a team which advocates on behalf of small Hawaii businesses. They are responsive and provide very practical advice and solutions. This is invaluable. We could never hire this expertise in-house, at any price."*



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