

The Families First Coronavirus Response Act (FFCRA)

The Families First Coronavirus Response Act (FFCRA) was signed by President Trump on March 18, 2020 and is scheduled to take effect April 2, 2020. The FFCRA applies to employers with less than 500 employees and all public employees, including teachers, administrators, and other school employees. Its provisions ensure that workers have up to two work-weeks of job-protected, immediately available paid sick days for coronavirus-related health and caregiving reasons, and up to 12 weeks of job-protected, paid family leave in certain coronavirus-related circumstances. Specifically, paid time may be used for quarantine, diagnosis, or care of oneself or a family member, or to care for a child whose school or usual source of care is closed due to the COVID-19 pandemic. The law also includes tax credits to reimburse employers for the cost of wages paid for emergency paid sick days and paid family leave.

Importantly, however, this law does not provide paid leave to those employees off of work because of an office closure. If, however, public schools were to return with an online, telework platform, and the employee is unable to telework because of a coronavirus-related health or caregiving reason, then leave pursuant to FFCRA is available.

The notable provisions of the FFCRA are:

Emergency Paid Sick Leave: The FFCRA provides up to 80 hours of paid leave to all full-time employees who need to miss work and are unable to telework because of illness or quarantine OR to care for family members who are ill, quarantined, or have children under the age of 18 without school or child care because of the COVID-19 pandemic. Part-time employees are also entitled to two weeks pro rata paid leave. This emergency paid sick leave covers employees who must be absent from work AND are unable to telework because:

The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;

The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

The employee is caring for an individual who is subject to a quarantine or isolation order as described in point 1 above or has been advised by a health care provider as described in point 2 above;

The employee is caring for their child because the child's school or place of care has been closed, including a circumstance where the child's care provider is unavailable due to COVID-19 precautions; or

The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Notably, all employees are eligible for emergency paid sick leave immediately upon hire, and employers may not require employees to use other paid leave before using emergency paid sick leave if that leave is related to COVID-19 pandemic.

Emergency paid sick leave is paid at the employee's regular rate of pay if the employee is absent for his or her own illness (such as in points 1, 2, or 3 above), but is capped at \$511/day or \$5,110 total. Emergency paid sick leave is paid at two-thirds of the employee's regular rate of pay if the employee is absent to care for a family member (such as in points 4 or 5 above), capped at \$200/day or \$2,000 total.

Under the law, employers are still prohibited from requiring employees to find a replacement employee to cover their shift during a time when the employee is using emergency

paid sick leave. Notably, this sick leave need not be paid out on termination of employment and cannot be used intermittently.

This mandatory paid leave is in addition to any other paid leave already provided to such employees.

These provisions of the Act expire on December 31, 2020.

Expanded Family Medical Leave: The FFCRA provides paid FMLA leave to employees who have been employed for at least 30 days and are unable to work or telework because they are needed to care for a child under the age of 18 due to school closures or child care unavailability resulting from the COVID-19 pandemic. The first 10 days of this FMLA leave may be unpaid; but thereafter the leave must be paid at a rate of two-thirds of the employee's regular rate of pay, capped at \$200 per day or \$10,000 total per employee. This is not in addition to contractual leave or regular FMLA provisions. In other words, if an employee meets the qualifying conditions for expanded family medical leave related to the COVID-19 pandemic then it applies; in all other cases, the normal qualifications must be met in order to qualify for regular FMLA or other contractual leave benefits.

To be eligible for this expanded FMLA, employees need only to have been employed for 30 days rather than the usual 12 months.

The first 10 days of this FMLA may be unpaid, though the employee may elect to substitute paid time off or emergency paid sick leave as described above. Unlike traditional FMLA, an employer may not require an employee to substitute paid time off for any of this public health emergency FMLA. After the first 10 days of leave, the remaining 10 weeks of leave must be paid at a rate of at least 2/3 of the employee's usual rate of pay for the number of hours he or she would usually be scheduled to work, capped at \$200/day or \$10,000 total per employee. Employers will be required to

reinstate employees who utilize the public health emergency FMLA in the same manner as traditional FMLA.

Again, these provisions expire December 31, 2020.

Employer Tax Credit: The legislation provides that employers who are required to provide their employees with emergency paid sick leave and/or public health emergency FMLA may apply for and receive certain tax credits for those payments. Employers may receive a tax credit of up to 100% of the amount of emergency paid sick leave issued to employees, up to a maximum of \$511/day in the case of the employee's own illness or \$200/day if the employee is receiving leave to care for a family member. The tax credit is provided against the employer's portion of Social Security taxes. These credits can be applied quarterly. In addition, employers may receive a tax credit for the pay they are required to provide employees for public health emergency FMLA. This credit is also provided against the employer's portion of Social Security taxes, but it is capped at \$200 per day and \$10,000 for all calendar quarters. If the credit exceeds the employer's total liability for all employees for any calendar quarter, the excess credit is refundable to the employer.

