

# HR COMPLIANCE BULLETIN



## Families First Coronavirus Response Act—Employee Expanded Family and Medical Leave Rights

The [Families First Coronavirus Response Act \(FFCRA\)](#)—signed into law by President Trump on March 18, 2020—requires certain employers to provide employees with expanded family and medical leave for specified reasons related to COVID-19. The Department of Labor (DOL) Wage and Hour Division (WHD) administers and enforces the new law’s paid leave requirements. These provisions will apply from the effective date through Dec. 31, 2020.

The DOL is providing compliance assistance to employers and employees on their responsibilities and rights under the FFCRA. The following [guidance](#) was issued by the DOL regarding employee expanded family and medical leave rights under the law.

### Action Steps

- Employers should familiarize themselves with the new leave requirements to ensure compliance.
- Continue to monitor media and news outlets for updates related to the FFCRA and other federal and state guidance in response to the coronavirus outbreak.

### Highlights

Generally, the FFCRA provides that employees of covered employers are eligible for:

- Two weeks (up to 80 hours) of expanded family and medical leave for certain reasons related to coronavirus exposure, treatment or prevention; and
- Up to an additional 10 weeks of expanded family and medical leave under certain circumstances.

### Important Dates

#### March 18, 2020

President Trump signed coronavirus relief legislation into law.

#### April 1, 2020

The DOL provided guidance that the new paid leave provisions take effect on April 1, 2020.

#### Dec. 31, 2020

New leave laws sunset.



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## Overview

Generally, the FFCRA provides that employees of covered employers are eligible for:

- *Two weeks (up to 80 hours) of **expanded family and medical leave** at the employee's regular rate of pay* where the employee is unable to work because the employee is quarantined (pursuant to federal, state or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of **expanded family and medical leave** at two-thirds the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to federal, state or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services (HHS), in consultation with the Secretaries of the Treasury and Labor; and
- *Up to an additional 10 weeks of **expanded family and medical leave** at two-thirds the employee's regular rate of pay* where an employee, who has been employed for at least 30 calendar days, 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.

## Covered Employers

The expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees. Certain provisions may not apply to certain employers with fewer than 50 employees. See DOL FFCRA regulations (expected April 2020).

Most employees of the federal government are covered by Title II of the Family and Medical Leave Act (FMLA), which was not amended by the FFCRA, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the FMLA are covered by the paid sick leave provision.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

## Eligible Employees

All employees of covered employers are eligible for two weeks of expanded family and medical leave for specified reasons related to COVID-19. Employees employed for at least 30 days are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19.

Under the FFCRA, special rules apply for health care providers and emergency responders.

## Notice

Where leave is foreseeable, an employee should provide notice of leave to the employer as is practicable. After the first workday of expanded family and medical leave, an employer may require employees to follow reasonable notice procedures in order to continue receiving expanded family and medical leave.



## Qualifying Reasons for Leave

Under the FFCRA, an employee qualifies for expanded family and medical leave if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

- (1) Is subject to a federal, state or local quarantine or isolation order related to COVID-19;
- (2) Has been advised by a health care provider to self-quarantine related to COVID-19;
- (3) Is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- (4) Is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- (5) 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; or
- (6) Is experiencing any other substantially similar condition specified by the Secretary of HHS, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family and medical leave if the 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.

## Duration of Leave

- **For reasons (1)-(4) and (6):** A full-time employee is eligible for 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.
- **For reason (5):** A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave) at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

## Calculation of Pay

Paid sick time provided under the FFCRA does not carry over from one year to the next. Employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement or other separation from employment.

- **For leave reasons (1), (2), or (3):** Employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a two-week period).
- **For leave reasons (4) or (6):** Employees taking leave are entitled to pay at two-thirds their regular rate or two-thirds the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a two-week period).
- **For leave reason (5):** Employees taking leave are entitled to pay at two-thirds their regular rate or two-thirds the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period). An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave under this section.

*Source: U.S. Department of Labor*