

COVID-19 Response Resource

Families First Coronavirus Response Act FAQ

March 25, 2020

Reliance Standard and Matrix Absence Management continue to ensure our clients, customers and business partners can rely on us through the COVID-19 pandemic. The following FAQ is designed to help keep you informed and up-to-date on the FFCRA.

What is the FFCRA? When is it effective?	The Families First Coronavirus Response Act ("FFCRA"), originally introduced in the House as H.R. 6201, was passed on March 18, 2020, and includes the <i>Emergency Paid Sick Leave Act</i> and the <i>Emergency Family and Medical Leave Expansion Act</i> regarding employee absences related to COVID-19. These provisions will apply to leaves taken from the effective date of April 1, 2020, through December 31, 2020 (unless extended).
What employers are subject to the FFCRA?	Generally, the Act provides that private employers with fewer than 500 lives must provide these benefits to all employees. Public employers appear to be covered also but the U.S. Department of Labor (DOL) indicates that more guidance on this coverage will be forthcoming.
How are employees counted to determine whether the employer has under 500 employees?	In general, an employer has fewer than 500 employees if, at the time the employee's leave is to be taken, the employer employs fewer than 500 full-time and part-time employees within the United States, which includes any State of the United States, the District of Columbia, or any Territory or possession of the United States. This includes employees on leave; temporary employees who are jointly employed, and day laborers supplied by a temporary agency. Note that for an employer that hovers around 500 employees, this could result in differing leave coverage from day to day as the employer size fluctuates. More details can be obtained on the Department of Labor's website: https://www.dol.gov/agencies/whd/pandemic
Can you give us an easy-to-understand summary of the paid leave benefits under the FFCRA?	<p>Here is a very brief summary of the benefits that will go into effect on April 1, 2020:</p> <p>Sick leave: The Act will require private employers with fewer than 500 employees to provide employees with up to 80 hours (10 business days) of:</p> <ul style="list-style-type: none">• Paid sick leave equal to 100% salary (or the federal, state, or local minimum wage, if greater) to \$511/day maximum (subject to aggregate total of \$5110) to quarantine or to seek diagnosis or preventative care; OR• Dependent care equal to 2/3 salary (or the federal, state, or local minimum wage, if greater) to \$200/day max (to \$2000 in aggregate) to care for dependent for such purposes or if the school is closed or childcare unavailable. <p>There are no employee eligibility rules for paid sick leave; all Employees are eligible regardless of length of employment.</p> <p>Family leave: The Act requires that employers with fewer than 500 employees provide up to 12 weeks of job-protected leave to care for the employee's child under age 18 if the child's school or place of care is closed or childcare provider is unavailable due to COVID-19. The first 10 days are unpaid leave (which can be taken care of via paid sick leave, or any combination of paid or unpaid leave), then employers will pay employees a benefit equal to 2/3 of their salary to \$200/day max (to \$10,000 in aggregate) for remainder of the 12 week duration, but only for the new covered leave reason.</p> <p>This new FMLA leave type is available only to employees who have been employed by the employer from whom they request leave for at least 30 calendar days. No other employee eligibility rules apply.</p>

Is the Family Leave under the FFCRA available if the employee is able to work?	No. Family leave under the FFCRA is not available unless the employee is “unable to work (or telework) due to a need for leave.”
Is Family Leave under the FFCRA included as part of the existing FMLA 12 week total?	Yes, this additional leave type is included within the existing FMLA 12-week total. If someone has exhausted their 12 weeks of FMLA leave, they are not eligible for this Family Leave.
How do sick leave payments under the FFCRA interact with the employer’s other paid leave policies?	The employee may use paid sick leave provided under FFCRA first, then other employer-provided paid leave as needed. The employer cannot require any other sequence of usage.
How will the FFCRA benefits impact our STD, statutory disability and/or PFL benefits?	There is no definitive resolution yet to this important question. We are working with our trade associations to resolve. We will communicate immediately upon resolution.
Are any groups exempt from these paid leave benefits?	<p>These benefits are only available for employers with fewer than 500 lives. The DOL is authorized to draft regulations to exclude certain health care providers and emergency responders from eligibility.</p> <p>There is also a small business exemption for businesses with fewer than 50 employees if providing child care-related paid sick leave and expanded family and medical leave would jeopardize the viability of their business as a going concern. To elect this small business exemption, an employer should document why their business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.</p>
When can an employee use FFCRA paid sick leave?	<p>An employee may use paid this sick leave to the extent that the employee is unable to work (or telework) due to a need for leave because:</p> <ol style="list-style-type: none"> 1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19. 2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. 3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis. 4. The employee is caring for an individual who is subject to an order as described in item (1) or has been advised as described in item (2). Note there appears to be no limit on who this “individual” may be, and no requirement that it be a family member. 5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions. “Son or daughter” is not specifically limited to those under age 18 but is expected to be interpreted consistently with the FMLA Expansion Act. 6. 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.

<p>Are part-time workers eligible for FFCRA sick leave benefits?</p>	<p>Yes, part-time workers would receive proportionate benefits. What constitutes “part time” is not defined. FFCRA contains a provision for calculating pay for an employee with a variable schedule. The Equal Employment Opportunity Council (EEOC) has published guidance for employers related to COVID-19 for more information and our ADA services are designed to ensure compliance specific to workplace protections and rules related to COVID-19.</p>
<p>Are intermittent workers eligible for FFCRA sick leave benefits?</p>	<p>The law is silent on intermittent leave usage (most likely, intermittent usage is permissible).</p>
<p>Will the employer receive reimbursement for these sick leave and family leave payments?</p>	<p>The FFCRA includes provisions for 100% tax credits for amounts employers pay under the new law, including both the FMLA paid leave and the paid sick leave requirements. The tax credits go against Social Security taxes owed by the employer. If this does not yield 100% credit for amounts paid, the excess is refundable to the employer. Employers should consult their own attorney or tax adviser on the specific details of these tax credits.</p>
<p>Can an employee take 80 hours of paid sick leave for his/her own self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?</p>	<p>No. The maximum amount of paid sick leave is ten days (80 hours for a full-time employee; or, for a part-time employee, the average number of hours that the employee works over a typical two-week period) for any combination of qualifying reasons.</p>
<p>If an employee is home with a child because his or her school or place of care is closed, or child care provider is unavailable, does the employee get paid sick leave and/or expanded family and medical leave?</p>	<p>The employee may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. The employee may take both paid sick leave and expanded family and medical leave to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.</p> <p>The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten work days of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless the employee elects to use existing vacation, personal, or medical or sick leave under the employer’s policy. After the first ten work days have elapsed, the employee will receive 2/3 of his/her regular salary for the hours the employee would have been scheduled to work in the subsequent ten weeks, under the Emergency and Family Medical Leave Expansion Act. Please note the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act is only available for leave to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.</p>
<p>Can an employer deny an employee paid sick leave if the employer already gave the employee paid leave for a reason identified in the Emergency Paid Sick Leave Act prior to the Act going into effect?</p>	<p>No. The Emergency Paid Sick Leave Act imposes a new leave requirement on employers that is effective beginning on April 1, 2020. Family Leave under the FFCRA is included as part of the existing FMLA 12 week total, but any leave provided for school closure reasons, or if childcare is unavailable, prior to the effective date does not count as FMLA leave.</p>

<p>Are the paid sick leave and expanded family and medical leave requirements retroactive?</p>	<p>No. The Act is effective on April 1, 2020, for employees on leave on and after that date.</p>
<p>Does this new law mean that all FMLA leaves are now paid?</p>	<p>No. The only type of family and medical leave that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.</p>