

Families First Coronavirus Response Act

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The Department of Labor's Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions will apply from April 1, 2020 through December 31, 2020.

Generally, the Act provides that covered employers must provide to **all employees**:

- ▲ Two weeks (up to 80 hours) of **paid sick 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 **paid sick 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 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, in consultation with the Secretaries of the Treasury and Labor.

A covered employer must provide to **employees that it has employed for at least 30 days**:

- ▲ Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay where an employee 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 paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees.

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.

Qualifying Reasons for Leave:

Under the FFCRA, an employee qualifies for paid sick time 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 Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family 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 up to 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 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:

For leave reasons (1), (2), or (3): employees taking leave shall be paid 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 2-week period).

For leave reasons (4) or (6): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

For leave reason (5): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of

paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

Tax Credits:

Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage. For more information, please see the Department of the Treasury's website.

Employer Notice:

Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements. Found here: https://www.dol.gov/sites/dolgov/files/WHHD/posters/FFCRA_Posters/WH1422_Non-Federal.pdf.

Prohibitions:

Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA.

Penalties and Enforcement:

Employers in violation of the first two weeks' paid sick time or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act. 29 U.S.C. 216; 217. Employers in violation of the provisions providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or child care provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act. The Department will observe a temporary period of non-enforcement for the first 30 days after the Act takes effect, so long as the employer has acted reasonably and in good faith to comply with the Act. For purposes of this non-enforcement position, "good faith" exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.

Employee Requirements for Providing Notice of Need for Leave:

Requirement to provide notice.

1. An Employer may require an Employee to follow reasonable notice procedures after the first workday (or portion thereof) for which an Employee takes Paid Sick Leave for any reason other than caring for a child due to school closure or loss of childcare due to COVID-19. While an Employee may offer notice to an Employer sooner; the Department encourages, but does not

require, Employees to notify Employers about their request for Paid Sick Leave or Expanded Family and Medical Leave as soon as practicable. If an Employee fails to give proper notice, the Employer should give him or her notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave.

2. In any case where an Employee requests leave in order to care for the Employee's Son or Daughter whose School or Place of Care is closed, or Child Care Provider is unavailable, due to COVID-19 related reasons, if that leave was foreseeable, an Employee shall provide the Employer with notice of such Paid Sick Leave or Expanded Family and Medical Leave as soon as practicable. If an Employee fails to give proper notice, the Employer should give him or her notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave.
 - Timing and delivery of notice. Notice may not be required in advance, and may only be required after the first workday (or portion thereof) for which an Employee takes Paid Sick Leave or Expanded Family and Medical Leave. After the first workday, it will be reasonable for an Employer to require notice as soon as practicable under the facts and circumstances of the particular case. Generally, it will be reasonable for notice to be given by the Employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the Employee is unable to do so personally.
 - Content of notice. Generally, it will be reasonable for an Employer to require oral notice and sufficient information for an Employer to determine whether the requested leave is covered by the EPSLA or the EFMLEA. An Employer may not require the notice to include documentation beyond what is allowed in the Temporary Rule.
 - Complying with Employer policy. Generally, it will be reasonable for the Employer to require the Employee to comply with the Employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

Documentation of need for leave:

- a. An Employee is required to provide the Employer documentation containing the following information prior to taking Paid Sick Leave under the EPSLA or Expanded Family and Medical Leave under the EFMLEA:
 - » Employee's name;
 - » Date(s) for which leave is requested;
 - » Qualifying reason for the leave; and
 - » Oral or written statement that the Employee is unable to work because of the qualified reason for leave.

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- b. To take Paid Sick Leave for a qualifying COVID-19 related reason under a Federal, State or Local quarantine/ isolation, an Employee must additionally provide the Employer with the name of the government entity that issued the Quarantine or Isolation Order.
- c. To take Paid Sick Leave because the employee has been advised by a health care provider to self-quarantine, an Employee must additionally provide the Employer with the name of the health care provider who advised the Employee to self-quarantine due to concerns related to COVID-19
- d. To take Paid Sick Leave because the employee is experiencing symptoms of COVID-19 and seeking medical diagnosis from a health care provider, or to care for a family member who is quarantined or experiencing symptoms/seeking medical care for COVID19, an Employee must additionally provide the Employer with either:
 - 1. The name of the government entity that issued the Quarantine or Isolation Order to which the individual being care for is subject; or
 - 2. The name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.
- e. To take Paid Sick Leave to care for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19 or Expanded Family and Medical Leave, an Employee must additionally provide:
 - 1. The name of the Son or Daughter being cared for;
 - 2. The name of the School, Place of Care, or Child Care Provider that has closed or become unavailable; and
 - 3. A representation that no other suitable person will be caring for the Son or Daughter during the period for which the Employee takes Paid Sick Leave or Expanded Family and Medical Leave.

SAMPLE FORM

**Official Families First Coronavirus Response Act (FFCRA) Leave Request Form
Employee Request for Emergency Paid Sick Leave and/or Expanded Family Medical Leave Act**

Procedure: Please fill out the below form and return to your manager or the HR department at least one day before leave is needed. If you are unable to complete the form before leave is needed, a verbal request for leave will be accepted until official paperwork is able to be provided. Please note, signed paperwork will need to be provided within a reasonable amount of time to verify eligibility for leave.

Documentation supporting the need for leave must be included with this request, please see the "Documentation Supporting Leave Statement" on page 2 of this form at: <https://www.timberassociation.com/covid-19-information/Request for Emergency Paid Sick Leave>.

Employee Name: _____ Date: _____ Requested Leave Start Date: _____

Amount of emergency paid sick leave being requested is _____ hours. Anticipated End Date: _____

I am requesting emergency paid sick leave under FFCRA due to my inability to work (or telework) because:

- 1) I am subject to a federal, state, or local quarantine or isolation order related to COVID–19.
- 2) I have been advised by a health care provider to self-quarantine due to concerns related to COVID–19.
- 3) I am experiencing symptoms of COVID–19 and seeking a medical diagnosis.
- 4) I am caring for an individual who is subject to either number 1 or 2 above.
- 5) I am caring for my child whose primary or secondary school or place of care has been closed, or my childcare provider is unavailable due to COVID–19 precautions; and,

I attest that no other suitable person is available to care for my child during the requested period of leave.

- 6) I am experiencing another substantially similar condition specified by the secretary of health and human services.

I have attached documentation supporting my need for leave.

Employee Signature: _____ Date: _____

Manager Signature: _____ Date: _____