

Still Confused About the FFCRA?

Update of the Families First Coronavirus Response Act

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Agenda

- 1) Family First Coronavirus Response Act Overview
- 2) DOL Clarifications
- 3) Employer Documentation Requirements
- 4) Employer Leave Policies

Resource Links

- Payroll Tax Credits for Paid Leave - [IRS Q&A](#)
- FFCRA Posters - [DOL FFCRA Site](#)
- Questions on FFCRA Scenarios – [DOL FFCRA Q&A](#)
- [EIDL PPP Comparison](#)

Information provided is for general information and education purposes only and should not be construed or relied upon as legal or tax advice. For such advice, please seek appropriate professional counsel. The statutes, authorities, and other laws cited in this presentation are subject to change.

Families First Coronavirus Response Act

- Effective April 1 through December 31, 2020
- Temporary Non-Enforcement Period Expires April 17
- Applies to Employers with Fewer than 500 Employees
 - 500 Counted the Day Leave is Taken
 - Includes FT, PT, Employees on Leave, and Temp Employees who are joint employed
 - < 50 Employees Excluded Only if an officer of the business determines it would “jeopardize the viability”
- Eligible Employees
 - EFMLEA (Paid FMLA) - Employees Employed for at least 30 days and Only for School and Daycare closings
 - EPSLA (Paid Sick Leave) – ALL Employees including FT & PT and NO employment timeframe requirement

Two New Types of Paid Sick Leave for Covid-19 (Both Apply to Employers with <500 EEs)

1) Paid FMLA - Employees Employed for at least 30 days.

- First Two Weeks is unpaid unless paid by PTO or Paid Sick Time.
- Up to 10 Weeks Paid at 2/3 regular rate (or minimum wage) up to \$200/day and \$10,000/10 weeks
- Only for Reason #5 – Caring for a child whose school/daycare closed.

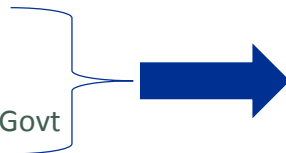
2) Paid Sick Time – ALL Employees (FT and PT and NO employment timeframe requirement)

- FT Paid 80 hours or two weeks for one of the 6 reasons provided.
- PT – Calculation on the DOL website. Basically it is what they would work on average in 2 weeks timeframe
- Maximum is 80 hours or 2 Weeks

6 Qualifying Reasons for Leave

- (1) Govt Quarantine or Isolation Order
- (2) Advised by Healthcare to Quarantine
- (3) COVID Symptoms but Seeking Diagnosis

- (4) Caring for Individual subject to (1) or (2)
- (5) Caring for child whose school/daycare closed
- (6) Other Substantially-similar conditions specified by Govt



2 Pay Types

- a) Regular Rate up to \$511/day and \$5,110 over 2 weeks
- b) 2/3 of their Regular Rate up to \$200/day and \$2,000 over 2 weeks
**also see above EFMLA for number (5)

DOL Clarifications on FFCRA

Shelter at Home Order   Govt Quarantine or Isolation Order (Reason 1)

Furloughs/Reduced Hours/ No work  Paid Leave

Telework and/or Essential Employer  Exemption to FFCRA Rules

FFCRA Required Paid Leave  Employer Provided PTO/Paid Leave

Employee Self-Quarantine (Without Seeking Medical Advice)  Paid Leave

DOL Clarifications on FFCRA

EFMLA  Reduction in FMLA 12 Workweeks

Individual  Immediately Family Member or Resides in Your Home (Reason 4)

- Exception when a relationship creates an expectation that you would care for this person in a quarantine or self-quarantine
-

Definition of a Child Also  18+ Year Old Disabled Child (Reason 5)

Full Time Employee  40 or more Hours a Week

Other Substantially-similar Conditions  Not Defined Yet

Health Care Provider Exemption

Health Care Provider is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, Employer, or entity.

Emergency Responder Exemption

An Emergency Responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

Benefits and EEs on Workers Comp/Disability

- Employees are Entitled to continued Group Health Coverage, open enrollment rights, and same premium contributions (like FMLA).
- In general, you are not eligible for FFCRA leave if you are on leave due to an on-the-job injury or disability
- If you returned to work on light duty before you need FFCRA leave, you are eligible
- For a leave of absence, it depends on whether the leave is voluntary

Drafting & Implementing FFCRA Policies

EPSLA

- Review existing sick leave policies and procedures
- What procedure do you already have in place for requesting sick leave?
- Can you make small changes to current policies to fit the EPSLA requirements?
- Cannot require advance notice
- Employers may, in general, require employees follow existing procedures for seeking leave
- Consider addressing telework situations

Drafting & Implementing FFCRA Policies

EFMLEA

- Review existing FMLA policies and procedures
- Do you already have a leave policy in place that can be amended?
- What if you have not been covered by FMLA in the past?
- Considerations for drafting a new or amended policy
 - State how employees can apply for EFMLEA
 - State whether PTO runs concurrently after first 2 weeks
 - State that total FMLA leave for the year is 12 weeks.

Employer Documentation Requirements (Updated April 6)

- Employers may not require advance notice (only after the first workday)
- Notice can be given by Employee's spokesperson
- If Employee fails to provide notice, employer should provide Notice of Failure and allow time for an employee to respond before denying the request for Leave
- Retain Documentation 4 Years

Employer Documentation Requirements (Updated April 6)

1. Employee's Name
2. Dates for which the Leave is Requested
3. COVID-19 Qualifying Reason for the Leave
4. Oral or Written Statement that the employee is unable to work or telework and the Qualifying Reason
5. The stated Qualifying Reason will dictate what additional documentation you need.

FFCRA Regulations Dictate Documentation Requirements

- Reason 1 – Employee must provide the name of the government entity that issued the order
- Reason 2 – Employee must provide the name of the HCP advising to self-quarantine
- Reason 3 – No specific requirements

FFCRA Regulations Dictate Documentation Requirements

- Reason 4 – Employee must provide:
 - Name of the government entity that issued the order; or
 - Name of HCP who advised the individual to self-quarantine

- Reason 5 – Employee must provide:
 - Name of the child being cared for
 - Name of the school, place of care, or child care provider that closed
 - A statement representing that no other suitable person is available to care for the child

- For FMLA taken due to an employee's own serious health condition related to COVID-19 or to care for family member with serious health condition, normal FMLA Certification requirements still apply.

Sample Employee Request Form

I CERTIFY THAT AM UNABLE TO WORK (OR TELEWORK) FOR THE FOLLOWING REASON:

I am subject to a **federal, state, or local quarantine or isolation** order related to COVID-19 that specifically prevents me from working.
Name of the government entity issuing the order:

I have been **advised by a health care provider to self-quarantine** because of concerns related to COVID-19.
Name of the advising healthcare provider:

I have **symptoms of COVID-19** and I am seeking (or have sought) a diagnosis.

I am **caring for another individual** who is subject to quarantine or has been advised by a health care provider to self-quarantine related to COVID-19.
Name of person I am caring for and our relationship:

Name of the government entity issuing the order:

OR

Name of the advising healthcare provider:

I **need to care for my child(ren)** because their school or childcare provider is closed or unavailable because of COVID-19. I **certify that no other suitable person is available to care for the child(ren) during the period of requested leave.** If listed child is over 14, I further certify that there are special circumstances that require me to provide care for them.

Name(s) and age(s) of child(ren):

Name of closed school(s) or place(s) of care:

I am experiencing **other conditions substantially similar** to COVID-19 as specified by the Department of Health and Human Services.

Employer Documentation For IRS Tax Credits

Maintain These Records for 4 Years

- Documentation on how the employer determined paid sick leave and EFMLA to employees including records of work, telework, and leave
- Documentation on how the employer determined the amount including any qualified health plan expenses allocated to wages.
- Copies of 941 for employers that use 3rd parties and records of information provided to 3rd party.
- Copies of Form 7200
- Other documents needed to support requests

** For more information on Tax Credits please contact your Payroll provider or CPA.

Questions...

- What happens if an employee puts themselves at Risk?
 - Travels out of the country or to Louisiana?
 - Employer Quarantine versus Self-Quarantine?
- What if I have work or tele-work for my employee but the employee cannot work due to the need to care for a child when school is closed?
- What about Intermittent Leave?

Continuing Education Certification

HRCI Activity ID: 521241 (pending 1.5 credit hours)

SHRM Activity ID: 20-4UYQK (pending 1.5 credit hours)

TSBPA Provider Number: 010504

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Gus Bates Coronavirus Website:

<http://gusbates.com/coronavirus-covid-19-resources>

