

COMPLIANCE GUIDEBOOK



BARKLEY
RISK MANAGEMENT & INSURANCE

Families First Coronavirus Response Act

INTRODUCTION

Late on March 18, President Trump signed into law the Families First Coronavirus Response Act (FFCRA), which is aimed at containing the widening effects of COVID-19. Among other things, the FFCRA creates several significant new leave and sick pay obligations for covered employers.

OVERVIEW

- The FFCRA provides new employee leave benefits, including paid sick and extended family leave for employees who work for employers with **fewer than 500 employees**.
- These rules will apply starting April 1, 2020 through December 31, 2020.
- For all employees:
 - **Two weeks** of paid sick time at the employee's **regular rate of pay** where the employee is unable to work because the **employee** is quarantined.
 - **Two weeks** of paid sick time at **two-thirds the employee's regular rate of pay** because the employee is unable to work because of a need to **care for an individual** subject to quarantine.
- For those employed for at least 30 days:
 - Up to an **additional 10 weeks** of paid family leave at **two-thirds the employee's regular rate of pay** when an employee is unable to work due to a need for leave to **care for a child whose school is closed**.
- Requirements are **not retroactive**. An employer therefore cannot count paid leave given to an employee before the FFCRA takes effect.



EMERGENCY PAID SICK LEAVE

The FFCRA creates the *Emergency Paid Sick Leave Act* which requires employers to provide paid sick time to employees who are unable to work due to the COVID-19 outbreak.

WHICH EMPLOYERS MUST COMPLY?

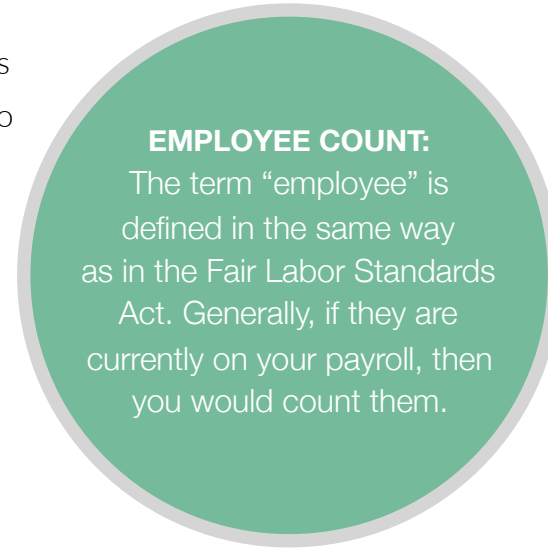
Employers with **fewer than 500 employees** are covered. Healthcare providers and emergency responders can be excluded.

WHO IS ELIGIBLE?

All full and part-time employees that have been employed for at least 30 days.

HOW MUCH LEAVE IS PROVIDED?

- Full-time employees can take up to 2-weeks of paid leave.
- Part-time employees can take paid leave equal to the average number of hours that the employee works over a 2-week period.



Employees ***can not be required*** to use other paid time off before using paid sick leave under this law.



WHAT ARE ELIGIBLE REASONS FOR PAID SICK LEAVE?

As related to the COVID-19 outbreak, employees can take paid leave for the reasons listed below.



When quarantined or isolated subject to federal, state, or local quarantine/isolation order

**REGULAR
RATE OF PAY**
\$511 MAX
PER DAY
**2 WEEKS
DURATION**



When advised by a health care provider to self-quarantine

**REGULAR
RATE OF PAY**
\$511 MAX
PER DAY
**2 WEEKS
DURATION**



When experiencing symptoms and seeking medical diagnosis

**REGULAR
RATE OF PAY**
\$511 MAX
PER DAY
**2 WEEKS
DURATION**



When caring for an individual when quarantined or advised by health care provider to self-quarantine

**2/3 REGULAR
RATE OF PAY**
\$200 MAX
PER DAY
**2 WEEKS
DURATION**



When caring for a child whose school or place of care is closed (or child care provider is unavailable)

**2/3 REGULAR
RATE OF PAY**
\$200 MAX
PER DAY
**12 WEEKS
DURATION***



When experiencing any other substantially-similar condition specified by the Secretary of HHS in consultation with the Secretaries of Labor and Treasury

**2/3 REGULAR
RATE OF PAY**
\$200 MAX
PER DAY
**2 WEEKS
DURATION**

** First 2-weeks (10 days) can be unpaid*

EXPANDED FAMILY AND MEDICAL LEAVE

The FFCRA also creates the *Emergency Family and Medical Leave Expansion Act* which gives employees the right to paid leave when they are unable to work because they need to care for their child whose school or place of care has been closed due to COVID-19.

WHICH EMPLOYERS MUST COMPLY?

Employers with **fewer than 500 employees** are covered. Healthcare providers and emergency responders can be excluded.

WHO IS ELIGIBLE?

All full and part-time employees that have been employed **for at least 30 days**.

HOW MUCH LEAVE?

Employees can take **up to 12 weeks** of leave.

WHAT QUALIFIES?

Employees qualify when they are unable to work because they **need to care for their minor child whose school or place of care has been closed** due to a COVID-19 emergency.

IMPORTANT:

The original version of the bill allowing for leave due to an employee exhibiting symptoms of COVID-19 were **removed** from the final legislation.



Employees **qualify for both** paid sick leave and expanded family and medical leave to care for a child whose school or place of care is closed due to COVID-19.

IS EXPANDED FAMILY AND MEDICAL LEAVE PAID?

Employees are entitled to **2/3 of their regular pay** after the **first 2-weeks (ten workdays)** of extended family leave. Employees **may elect** to use paid sick leave for the first 2-weeks (ten workdays), or may substitute any accrued vacation leave, personal leave, or medical or sick leave available under their employer's policy.

First 2-Weeks

May Be Unpaid or Paid

Next 10-Weeks

Paid 2/3 of their regular pay,
not to exceed \$200 per day or \$10,000 total.

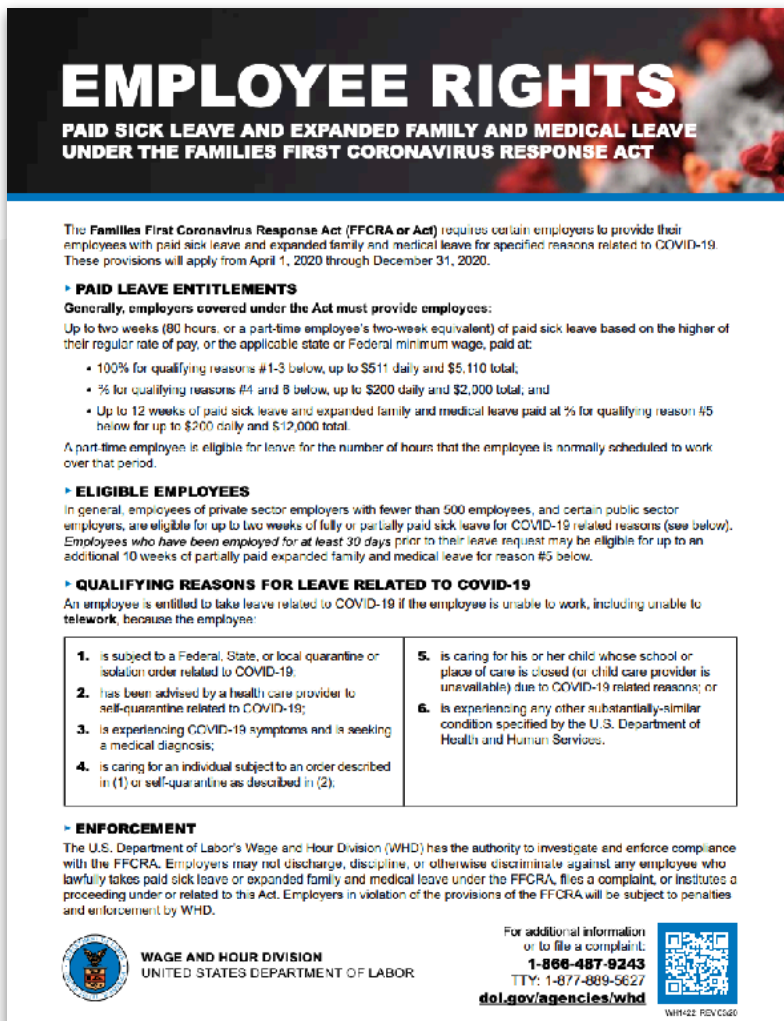
IS EMPLOYMENT GUARANTEED UPON RETURN?

Employees taking leave would be entitled to job restoration. The same reinstatement provisions apply as apply under the traditional FMLA. However, restoration to position does not apply to employers with fewer than 25 employees if certain conditions are met:

1. The **job no longer exists** because of changes affecting employment caused by an economic downturn or other operating conditions that affect employment caused by a public health emergency; **and**
2. The employer makes **reasonable efforts** to return the employee to an equivalent position, and makes efforts to contact a displaced employee if anything comes up within a year of when they would have returned to work.

EMPLOYEE POSTER

Employers must post a **notice of employee rights under the FFCRA** in a conspicuous place on their premises.



EMPLOYEE RIGHTS
PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE
UNDER THE 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 and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

► **PAID LEAVE ENTITLEMENTS**
Generally, employers covered under the Act must provide employees:
Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- % for qualifying reasons #4 and 8 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at % for qualifying reason #5 below for up to \$200 daily and \$12,000 total.


A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

► **ELIGIBLE EMPLOYEES**
In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.


► **QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19**
An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

<ol style="list-style-type: none">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);	<ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.
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► **ENFORCEMENT**
The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

 **WAGE AND HOUR DIVISION**
UNITED STATES DEPARTMENT OF LABOR

For additional information or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd

 WH1422-FCVCS46

Teleworkers:

An employer may satisfy this requirement **by emailing or direct mailing this notice to employees**, or posting this notice on an employee information internal or external website for those workforces **who are currently teleworking off premises.**



You can download this poster at <https://barkleyrisk.com/covid19>

PAYROLL TAX CREDIT

Employers will be provided tax relief for amounts paid to employees for Paid Sick Leave and FMLA leave.

- To take immediate advantage of the paid leave credits, businesses can **retain and access funds** that they would otherwise pay to the IRS in payroll taxes.
- If those amounts are not sufficient to cover the cost of paid leave, employers can seek an **expedited advance from the IRS** by submitting a streamlined claim form.

SICK LEAVE TAX CREDIT

An emergency paid sick leave quarterly payroll tax credit may be claimed by employers equal to 100 percent of the amount of sick leave wages paid to employees per payment and duration schedule outlined in the FFCRA. *(See Page 11: APPENDIX A)*

FMLA LEAVE EXTENSION TAX CREDIT

For those employers who provide public health emergency FMLA leave wages, a separate payroll tax provision allows a 100% credit against the employer's share of the payroll tax for each employee, capped at \$200 per day (\$10,000 total) per employee.





CLOSED WORKPLACE

Employers **do not have to** provide paid sick leave or expanded family leave if they close their worksite due to lack of work or because they were required to close pursuant to a Federal, State, or local directive. Employees may be eligible for unemployment insurance benefits.

If an employer closes while employees are on paid sick leave or expanded family and medical leave, the employer must pay for any paid sick leave or expanded family and medical leave used before the employer closed.





HEALTH BENEFITS CONTINUATION

If an employee elects to take paid sick leave, an employer must **continue health coverage**.

Employees are entitled to **continued group health coverage** during expanded family and medical leave on the same terms as if they continued to work.

Whether an employee's **other benefits** will continue if the employee takes leave for a public health emergency depends on the terms of the benefit plan documents and leave policies.

COVID-19 TESTING:

The act requires all medical plans to cover diagnostic testing-related services for COVID-19 at 100 percent without any deductibles or co-pays.



PENALTIES AND ENFORCEMENT

Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA.

Employers in violation will be subject to the penalties and enforcement of the Fair Labor Standards Act and the Family and Medical Leave Act.

There will be a temporary period of **non-enforcement for the first 30 days**, so long as the employer has acted reasonably and in good faith to comply.



APPENDIX A: FFCRA Pay and Leave Matrix

Summary Diagram of the Paid Leave Available to Employees Under this Act.

Qualifying Reason for Leave

Pay and Duration

- Employee is subject to a **government quarantine** or isolation order.
- Employee has been advised by a health care provider to **self-quarantine**.
- Employee is **experiencing symptoms** and is seeking a medical diagnosis.

Pay:

- Regular Rate of Pay
- Up to \$511 a day (\$5,110 max over 2-weeks)

Duration:

- Full-time EEs can take up to 2 weeks (80 hours)
- Part-time EEs can take paid leave equal to the average number of hours that the employee works over a 2-week period.

- Employee is **caring for an individual** that is subject to government quarantine or isolation order; or been advised by a health care provider to self-quarantine.
- Employee is experiencing any other **substantially-similar condition** specified by the Secretary of HHS, in consultation with the Secretaries of Labor and Treasury.

Pay:

- **2/3 Regular Rate of Pay**
- Up to \$200 a day (\$2,000 max over 2-weeks).

Duration:

- Full-time EEs can take up to 2 weeks (80 hours)
- Part-time EEs can take paid leave equal to the average number of hours that the employee works over a 2-week period.

- 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.

Pay:

- 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher
- Up to \$200 per day and \$12,000 in total (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

Duration:

- Full-time EEs can take up to 12-weeks (40 hrs/wk)
- Part-time EEs can take leave for the number of hours that the employee is normally scheduled to work over that period.



APPENDIX B: FFCRA Common Questions

Below are various questions we have received from Barkley clients:

1. **I have more than 500 employees, am I required to offer emergency paid sick leave or emergency FMLA leave as outlined by the FFCRA?** No. The FFCRA only applies to employers with less than 500 employees.
2. **Our company already offers two weeks paid sick leave, do we need to offer an additional two weeks of paid leave?** Yes. The FFCRA grants eligible employees paid sick leave “in addition to” any preexisting leave accrued.
3. **Can I require my employees to first use their PTO before providing paid sick time?** No. The FFCRA specifically prohibits employers from requiring employees to exhaust their existing PTO before using any new paid sick leave.
4. **My employees work variable hours, how do I calculate paid sick leave for my hourly employees?** Employers must look at the preceding six-month period to determine the employee’s average hours.
5. **If the employee’s employment is terminated, do I have to pay them for paid sick time that is unused?** No. The FFCRA does not require financial or other reimbursement to an employee upon the employee’s termination, resignation, retirement, or other separation from employment for unused paid sick time under this Act.

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6. **Do I have to pay employees for emergency paid sick leave if employees are unable to work because I have decided to close my business or made a business determination that employees should not be working?** No. If an employer makes a decision to close or cancel work shifts for business reasons (i.e. lack of work), emergency paid sick leave will not have to be paid.
 7. **Do I have to provide FMLA leave if employees are unable to work because I have decided to close my business or made a business determination that employees should not be working?** No. If an employer makes a decision to close the business, the employee will not be entitled to COVID-19 Qualifying FMLA leave.
 8. **I have an employee that has already taken 12 weeks of FMLA leave this year, are they eligible for an additional 12 weeks of leave to stay home with their kids?** No. The FFCRA does not expand an eligible employee's FMLA leave entitlement to greater than 12 workweeks during any 12-month period.
 9. **Can emergency FMLA leave run concurrently with emergency paid sick leave?**
If available, the paid sick leave may be used to cover the first 10 days of FMLA leave for COVID-19.
 10. **If employees are on FMLA leave for non-COVID-19 reasons, do I now have to pay them?** No. The 2/3 payment requirement only applies to emergency FMLA leave related to COVID-19.