

Our topic is **“Families First Coronavirus Response Act – A Brief Overview**

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# **Families First Coronavirus Response Act – A Brief Overview**

Bob Howie

## What We'll Cover and What We Won't

- This short presentation will cover the basics of two components of the FFCRA:
  - Emergency Paid Sick Leave Act (which we'll call “paid sick leave”)
  - Emergency Family and Medical Leave Expansion Act (“paid family leave”)
- We will not cover other aspects of FFCRA (unemployment expansion, for instance)
- We will not cover the CARES Act (loans for business; stimulus)
- Please see our firm's Resources Page for much more (<https://www.foxrothschild.com/coronavirus-resources/>)



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## Effective Date

- FFCRA provided that it would become effective no later than April 2, 2020
- United States Department of Labor announced that the paid leave portions are effective as follows:
  - Starting April 1, 2020
  - Apply to leave taken between April 1, 2020 and December 31, 2020



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## Employer Coverage

- **Which employers are required to provide paid sick and paid family leave?**
  - Private employers with fewer than 500 employees and all governmental employers
  - NOTE: this includes employers who are otherwise exempt from the FMLA who have fewer than 50 employees
- **Are certain employees not covered?**
  - The benefits do not apply to certain federal government employees. Employers also may exclude employees who are health care providers and emergency responders.



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## Counting to 500

- DOL's position:
  - Count all full-time and part-time employees within the United States (including DC/territories);
  - Count employees on leave;
  - Count temporary employees who are jointly employed by you and another employer (regardless of whether the jointly-employed employees are maintained on only your or another employer's payroll);
  - Count day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship).
  - Do not count workers who are independent contractors under the Fair Labor Standards Act.



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# What Type of Paid Sick Leave is Available?

Generally:

- Two weeks (up to 80 hours) of paid sick time at the regular rate of pay (subject to caps) if the employee is unable to work or telework because the employee is subject to a government quarantine or isolation order or advice of a health care provider to self-quarantine and/or experiencing COVID-19 symptoms and seeking a medical diagnosis

OR

- Two weeks (up to 80 hours) of paid sick time at two-thirds the regular rate of pay (subject to caps) because the employee is unable to work because of a bona fide need to care for an individual subject to a government quarantine or isolation 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



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## What Type of Paid Family Leave is Available?

- Up to an additional 10 weeks of paid family leave at two-thirds the regular rate of pay (subject to caps), 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
  - Note the FMLA's normal one year and 1250 hours eligibility requirements are eliminated for this one form of leave



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## Is There a Cap on the Amount of Leave Pay an Employee Can Receive?

- Yes, there are daily and aggregate caps.
- For leave related to COVID-19 quarantine or symptoms, sick leave pay is at the 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 related to caring for an individual subject to a quarantine order or self-quarantine, sick leave pay is at 2/3 the 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 related to child care, leave pay is at 2/3 the 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).



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## Duration of Leave

### **For how long can an employee take paid sick leave?**

- For leave related to an employee's quarantine or symptoms of COVID-19, 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 how long can an employee take paid family leave?**

- For leave related to caring for a child, 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.



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# Other Employer Considerations

**What if my workplace is closed for lack of business or because of a federal, state or local directive? Are furloughed or laid off employees eligible for FFCRA leave?**

- No. DOL's position is that if an employee cannot work because the employer closes the worksite because of lack of business or because it is required to close pursuant to federal, state or local directive, an employee will not get paid sick leave or expanded family and medical leave. The employee may be eligible for unemployment insurance benefits.

**Is there an exemption for small businesses?**

- Employers with fewer than 50 employees may qualify for exemption if the leave requirements would jeopardize the viability of the business as a going concern; the Department of Labor is expected to publish regulations about this exemption in the future



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## Other Employer Considerations

**Can an employee take other paid leave instead of these new types of leave?**

- An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave, as well as sick or family leave mandated by state and local governments
- New FFCRA is in addition to all other forms of leave under company policy or state/local law



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## Other Employer Considerations

**Is the FFCRA retroactive?**

- No.

**What if I already provided leave to employees prior to April 1 for a qualifying reason, do I need to provide more?**

- Yes, if the employee has a qualifying reason under FFCRA.



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## Other Employer Considerations

### **Is all FMLA leave now paid?**

- No. Just for the reasons provided in FFCRA.

### **What if an employee has already used 12 weeks of FMLA? Does the employee get more leave?**

- If the employee has a qualifying reason, the employee is eligible for Paid Sick Leave. However, if the employee has previously exhausted FMLA leave, no additional leave is available under FFCRA.



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## Other Employer Considerations

**I'm able to telework, can I still get FFCRA leave?**

- No. FFCRA applies to employees unable to work or telework

**What if my telework is limited by taking care of kids home from school, can I take FFCRA leave intermittently?**

- Yes, the employer can (but need not) allow paid intermittent leave for this reason only. DOL encourages flexibility.



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## Employer Tax Credit

### Can an employer receive reimbursement for payment of FFCRA paid leaves?

- Yes, 100% is refundable as a tax credit with reimbursement as a credit against Social Security and Medicare payroll taxes. The U.S. Treasury may develop a mechanism for more accelerated reimbursement to small businesses.
- <https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>



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## Required Notice of Rights

- Employers must conspicuously post a notice of employee rights in a form prepared by DOL
- [https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)



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# Enforcement

- Employers may not discriminate or retaliate against employees who use paid sick time or paid family leave, or who take other protected activity
- Remedies
  - For failure to provide paid sick time, FLSA remedies apply
  - For failure to provide paid family leave, FMLA remedies apply



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## Could All of This Change?

- Yes, even though the law was enacted on March 18, Congress already is considering changes



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## Where Can We Get Additional Information?

- Resources:

- <https://www.foxrothschild.com/coronavirus-resources/>
- <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>



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