



FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

COVID-19: A Deep Dive into the Families First Coronavirus Response Act (FFCRA) and Employer Best Practices

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LEGAL DISCLAIMER

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)



This communication and any accompanying documents is intended for educational and informational purposes only and does not constitute legal information and should not be relied on as such.



While we hope that you will learn a lot today, we are not attorneys, and the information should not be construed as legal advice. If you are seeking legal advice, you are encouraged to consult an attorney.

PURPOSE

Extend additional assistance and protections to individuals and businesses affected by the COVID-19 crisis.



COMPONENTS

- 1 Emergency Family and Medical Leave Expansion Act
- 2 Emergency Paid Sick Leave Act
- 3 Refundable Tax Credits to Pay for Leave
- 4 Emergency Unemployment Insurance Stabilization and Access Act
- 5 Q & A

APPLICABILITY UNDER EMERGENCY LEAVES

COVERED EMPLOYERS

- Private employers with **fewer than 500 employees** (at the time the leave is requested) that are engaged in commerce or in any industry or activity affecting commerce.
- All public agencies that employ one or more employees.
- Other entities that are not a private entity.
- Anyone acting in the interest of the employer.



EXEMPTIONS

- Secretary of Labor has the regulatory authority to exempt employers with **fewer than 50 employees** if the provisions “would jeopardize the viability of the business as a going concern.”
- The Secretary of Labor also excludes certain **health care providers and emergency responders** from the definition of eligible employees.



EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

Leave Purpose

“Qualifying need related to a public health emergency.”

Qualifying Need

Defined as to mean “the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school [meaning a primary or secondary school only] or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”

Public Health Emergency

Defined to mean “an emergency with respect to COVID-19 declared by a Federal, State, or local authority.”

The provision is effective on April 1, 2020 and will expire on December 31, 2020.



EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

EMPLOYEES

- Employees who have been employed for at least **30 calendar days** (rather than the 12-month period under the current FMLA).
- Telework is not available for the employee.

LENGTH

- Provides **up to 12 weeks** of job-protected leave.

PAY

- **First 10 days**—unpaid leave or employee could choose to use accrued vacation, personal or sick leave, (including in certain instances the emergency paid “sick” leave described later).
- **After the initial 10 days**—employer is required to provide paid leave based on an amount that is not less than 2/3 of an employee’s regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work.
- **Cap**—no more than \$200 per day or \$10,000 in the aggregate per employee.

REINSTATEMENT

- Employers with **25 or more employees would be required** to reinstate employees to the same or equivalent position after their FMLA leave period ends.
- Employers with **fewer than 25 employees do not have to reinstate** an employee to the same or equivalent position if the requirements would jeopardize the viability of the business as a going concern. Refusing to restore requires the following:
 - Position does not exist when the employee returns because of the public health emergency;
 - Employer tries to find a position to return the employee to at the end of the leave; and
 - Employer makes reasonable efforts for 1 year after leave to return the employee to work if a position becomes available.

EMERGENCY PAID SICK LEAVE ACT

Employers must provide **ALL full-time employees with 80 hours of emergency paid “sick” leave** related to the coronavirus (with special rules for part-time employees) **to the extent that the employee is unable to work.**

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 a federal, state or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to COVID-19 related concerns and seeking a medical diagnosis.

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 childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.

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.

Circumstances 1,2, and 3 are based on 100% of pay and circumstances 4,5, and 6 based on to 2/3 of pay.

EMERGENCY PAID SICK LEAVE ACT

PAID LEAVE

- Full-time employees—entitled to **80 hours of paid leave.**
- **Part-time** employees—entitled to “a number of hours equal to the number of hours that such employee **works, on average, over a 2-week period.**”
- Available to all employees, **regardless of how long employed.**
- Ends with the employee’s **next scheduled work shift** following the end of the qualifying need.
- Paid sick time under this section shall **not carry over from 1 year to the next.**

PAY

- Sick pay is calculated based on the employee’s **regular rate of pay or, if higher, the applicable minimum wage rate.**
- **For qualifying reasons 1,2, and 3 in the previous slide:**
 - Based on 100% of the regular rate of pay.
 - Maximum amount of required sick pay per employee is \$511 per day and \$5,110 in the aggregate.
- **For qualifying reasons 4,5, and 6 in the previous slide:**
 - Based on 2/3 of the regular rate of pay.
 - Maximum amount of required sick pay per employee is \$200 per day and \$2,000 in the aggregate.

OTHER

- **Workplace Poster** notice requirement must be posted.
- Prohibits employers from **discharging, disciplining or discriminating** against employees.
- Prohibits employers from requiring employees to **look for or find replacement** employees to cover the hours during which the employee is using the paid sick time.
- Violations are **punishable under the FLSA.**
- Employers **cannot require employees to use other paid leave** provided by the employer before the employee uses the Emergency Paid Sick Leave.

The provision is effective on April 1, 2020 and will expire on December 31, 2020.



0-49 EMPLOYEES

An employer should provide paid emergency leave to each employee to the extent that the employee is unable to work (or telework) due to a need for leave for any of the following circumstances:

EMERGENCY PAID SICK LEAVE ACT

APPLICABILITY	ELIGIBILITY	QUALIFYING EVENTS	PAY	EXEMPTION
<ol style="list-style-type: none"> Private employers Public agencies Other entities that are not a private entity Anyone acting in the interest of the employer 	<p>All employees, no matter how long employed.</p> <ul style="list-style-type: none"> All full-time employees entitled to 80 hours of paid leave. All part-time employees entitled to a "number of hours equal to the number of hours that such employee works, an average, over a 2-week period. 	Emergency Paid Sick Leave qualifying reasons #1, 2, and 3	<ul style="list-style-type: none"> Based on 100% of an employee's regular rate of pay with a maximum of \$511 per day and \$5,110 in total. 	<ul style="list-style-type: none"> With Secretary of Labor approval, employers with fewer than 50 employees may be exempt if the provisions "would jeopardize the viability for the business as a going concern." Certain health care providers and emergency responders.
		Emergency Paid Sick Leave qualifying reasons #4, 5, and 6	<ul style="list-style-type: none"> Based on 2/3 an employee's regular rate of pay with a maximum of \$200 per day and \$2,000 in total. 	

FMLA AS TEMPORARILY AMENDED BY THE EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

Family and Medical Leave Act
<ul style="list-style-type: none"> Normal qualifying reasons are not applicable to employers with fewer than 50 employees within a 75-mile radius. Applicable to qualifying reasons under the Paid Emergency Family and Medical Leave Expansion Act. <ul style="list-style-type: none"> The first 10 days for which an employee takes leave under the FML Expansion Act may consist of unpaid leave, but an employee may elect to substitute any accrued vacation/ personal/ sick/ medical, or the Emergency Paid Sick Leave for unpaid leave.

Emergency Paid Sick Leave	Paid Emergency Family and Medical Leave Expansion Act
<p>All employees regardless of length of employment are eligible to be paid based on 2/3 of pay with a max of \$200 per day and \$2,000 in total.</p>	<ul style="list-style-type: none"> All full-time and part-time employees who have been employed for at least 30 days are eligible to be paid based on an amount that is NOT less than 2/3 of an employee's regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work. No more than \$200 per day, per employee or \$10,000 in the aggregate. Possible reinstatement exception for employers with fewer than 25 employees if it jeopardizes the viability of the business.

QUALIFYING REASON #5 ONLY ●

WEEKS 1-2	WEEKS 3-12
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50-499 EMPLOYEES

An employer should provide paid emergency leave to each employee to the extent that the employee is unable to work (or telework) due to a need for leave for any of the following circumstances:

EMERGENCY PAID SICK LEAVE ACT

APPLICABILITY	ELIGIBILITY	QUALIFYING EVENTS	PAY	EXEMPTION
<ol style="list-style-type: none"> Private employers Public agencies Other entities that are not a private entity Anyone acting in the interest of the employer 	<p>All employees, no matter how long employed.</p> <ul style="list-style-type: none"> All full-time employees entitled to 80 hours of paid leave. All part-time employees entitled to a "number of hours equal to the number of hours that such employee works, an average, over a 2-week period." 	<p>Emergency Paid Sick Leave qualifying reasons #1, 2, and 3</p>	<ul style="list-style-type: none"> Based on 100% of an employee's regular rate of pay with a maximum of \$511 per day and \$5,110 in total. 	<p>Certain health care providers and emergency responders.</p>
		<p>Emergency Paid Sick Leave qualifying reasons #4, 5, and 6</p>	<ul style="list-style-type: none"> Based on 2/3 an employee's regular rate of pay with a maximum of \$200 per day and \$2,000 in total. 	

FMLA AS TEMPORARILY AMENDED BY THE EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

Family and Medical Leave Act

- Applicable to employers with 50+ employees within a 75-mile radius.
- Employees employed for at least 12 months with 1,250 hours of service are eligible.
- Normal FMLA Qualifying Events apply and possibly numbers 3 and 6 under the Emergency Paid Sick Leave Act.
- Follow company policy regarding the use of paid time off and leaves of absence.
- Applicable to qualifying reasons under the Paid Emergency Family and Medical Leave Expansion Act.
 - The first 10 days for which an employee takes leave under the FML Expansion Act may consist of unpaid leave, but an employee may elect to substitute any accrued vacation/ personal/ sick/ medical, or the Emergency Paid Sick Leave for unpaid leave.

<p>Emergency Paid Sick Leave All employees regardless of length of employment are eligible to be paid based on 2/3 of pay with a max of \$200 per day and \$2,000 in total.</p>	<p>Paid Emergency Family and Medical Leave Expansion Act</p> <ul style="list-style-type: none"> All full-time and part-time employees who have been employed for at least 30 days are eligible to be paid based on an amount that is NOT less than 2/3 of an employee's regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work. No more than \$200 per day, per employee or \$10,000 in the aggregate.
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WEEKS 1-2	WEEKS 3-12
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QUALIFYING REASON #5 ONLY ●

500+ EMPLOYEES

Please note that this information is applicable if you have employed 500 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

EMERGENCY PAID SICK LEAVE ACT

APPLICABILITY	ELIGIBILITY	QUALIFYING EVENTS	EMERGENCY PAID SICK LEAVE	EXEMPTION
N/A	N/A	N/A	N/A	N/A

FMLA AS TEMPORARILY AMENDED BY THE EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

Family and Medical Leave Act	
<ul style="list-style-type: none"> • Applicable to employers with 50+ employees within a 75-mile radius. • Employees employed for at least 12 months with 1,250 hours of service are eligible. • Normal FMLA Qualifying Events apply and possibly numbers 3 and 6 under the Emergency Paid Sick Leave Act. • Follow company policy regarding the use of paid time off and leaves of absence. 	
Emergency Paid Sick Leave	Paid Emergency Family and Medical Leave Expansion Act
N/A	N/A
WEEKS 1-2	WEEKS 3-12

REFUNDABLE TAX CREDITS TO PAY FOR EMERGENCY LEAVE

The Families First Coronavirus Response Act provides a series of tax credits to those employers subject to expanded FMLA and emergency paid sick leave requirements.



The employer-related credits, which are refundable, would be applied against the employer portion of Social Security taxes for each quarter equal to the “qualifying” paid leave wages paid by the employer.



The amount of the tax credits vary based on the type of leave.



The tax credit would apply to wages the employer pays between (1) April 1, 2020 and (2) December 31, 2020.

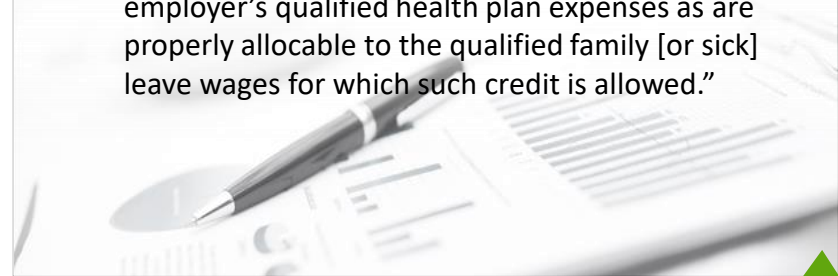
REFUNDABLE TAX CREDITS

EMERGENCY FML EXPANSION ACT

- Employers are provided a refundable **tax credit equal to 100 percent** of both the “qualified family leave wages” that the employer is required to pay, and the Medicare tax paid on said wages. The credit is claimed on the quarterly form 941.
- Employers are **not subject to the social security** tax on employee wages. That tax is normally 6.2% of wages up to the annual social security taxable wage base of \$137,700 for 2020. However, employers are still subject to the Medicare tax on employer wages.
- The amount of the qualified family leave wages that would be taken into account for purposes of the **credit per employee is \$200 for any day** for which the employer pays the employee qualified family leave wages, up to a maximum amount for all calendar quarters of \$10,000 per employee.

EMERGENCY PAID SICK LEAVE

- Employers provided a refundable tax credit equal to **100 percent of “qualified sick leave wages”** that the employer is required to pay for a given quarter.
- The amount of qualified sick leave wages for purposes of the credit would **vary** depending upon the reason for the leave.
- For employees who must self-isolate, obtain a coronavirus diagnosis or comply with a self-isolation recommendation from a public official or health care provider, the amount of qualified sick leave wages taken into account is **capped at \$511 per day**.
- The law also allows for an **increase in the amount of the tax credit** equal to the amount “of the employer’s qualified health plan expenses as are properly allocable to the qualified family [or sick] leave wages for which such credit is allowed.”



HOW DO EMPLOYERS GET REIMBURSED?

TPC can establish earnings codes that will be active effective April 2 that will be used for tracking qualified wages for both Family Leave and Sick Leave. TPC clients should use these codes when entering employee pay that is covered under the FFCRA. Please talk to your customer service team member to get those setup for you.

Emergency FML Expansion Act – **FAMILY LEAVE** payroll tax credit on 941.

Emergency Paid Sick Leave Act – **SICK LEAVE** payroll tax credit on 941.

- Payroll tax credit is taken on quarterly 941 for 100% of the qualified wages and is refundable.
- Credit must be recorded as income on your business return to offset the additional wages that are being recorded.
- Employers can add any increased health plan due to the emergency leave wages.
- Self-employed individuals get similar credits, but they are calculated differently.

\$1 Billion in Grants Being Issued to States for Emergency Unemployment Insurance

\$500 Million will be transferred to the states within 60 days after enactment of the law.

States must **require employers** to notify employees of the availability of unemployment benefits.

States **must ensure that applications** for unemployment compensation, and assistance with the application process, are accessible in at least two of the following:

- In-person
- By phone
- Online



\$500 Million reserved for states in which the number of unemployment claims has increased by **at least 10%** over the same quarter in the prior calendar year.

States must make it easier for individuals to get unemployment benefits by **waiving work search requirements and waiting periods.**

Additional requirements may unfold in the coming days/weeks.



THANK YOU

Please email frontdesk@thepayrollco.com
if you have any questions.

