Families First Coronavirus Response Act (FFCRA) and Unemployment Insurance:
HR and Payroll Questions

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Effective April 1, 2020 – December 31, 2020

Mandatory no-cost sharing paid leave/benefits – related to COVID-19 or SARS (includes public employers)

<500 employee requirement – does NOT apply to public employers
# Two Definitions of Paid Leave

## Emergency Paid Sick Leave

<table>
<thead>
<tr>
<th>Day 1 of employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Two weeks paid time</td>
</tr>
<tr>
<td>• Full-time - up to 80 hours paid time</td>
</tr>
<tr>
<td>• Part-time - average number of hours worked</td>
</tr>
</tbody>
</table>

6 qualifications

1. #1-3 100% pay $511 daily limit/$5,110 total limit
2. #4-6 2/3 rate of pay $200 daily limit/$12,000 total limit

- **Full-time** = regularly scheduled 40 hrs./ week
- **Part-time** = less than 40 hours

## Expanded FMLA

<table>
<thead>
<tr>
<th>After 30 days of employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>*12 weeks paid leave</td>
</tr>
<tr>
<td>• Full-time - up to 80 hours paid time</td>
</tr>
<tr>
<td>• Part-time - average number of hours worked</td>
</tr>
</tbody>
</table>

1 qualification

- First 10 days – unpaid leave
- 10+ days 2/3 rate of pay $200 daily limit/$10,000 total limit

- Based on number of hours normally worked.

*Includes all FMLA covered leave
## Emergency Paid Sick Leave

### 100% pay
**$511 daily limit/$5,110 total limit**

1. Employee is quarantined per federal, state or local authority
2. Employee advised to self-quarantine per health care provider
3. Employee has symptoms of COVID-19 and seeks medical diagnosis.

### 2/3 rate of pay
**$200 daily limit/$12,000 total limit**

4. Employee is caring for an individual who is subject to (1) or (2).
5. Employee is caring for a son or daughter due to closed school or child care.
6. Employee is experiencing similar symptoms of COVID-19

### Expanded FMLA
Employee is caring for a son or daughter due to closed school or child care.
Exclusions - Health Care Provider

Any employees at:

• Doctor’s office, hospital, health care center or 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

EFMLA: Section 3105
Paid Sick Leave: Section 5102(a)
29 C.F.R. 826.30(c)
Exclusions – Emergency Responder

- Military (National Guard), law enforcement officers, correctional institution personnel
- Fire fighters, emergency medical services personnel, emergency medical technicians, paramedics
- Emergency management personnel, 911 operators
- Child welfare workers and service providers
- Public works personnel
- Persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency
- Individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility

EFMLA: Section 3105
Paid Sick Leave: Section 5102(a)
29 C.F.R. 826.30(c)
Unable to Work

Written request including:

1. Employees name
2. Date or dates for requested leave
3. Statement of COVID-19 related reason the employee is requesting leave include written support
4. Statement why employee is unable to work/telework
Unable to Work  
(including telework)

<table>
<thead>
<tr>
<th>Explanation</th>
<th>Verification Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The employee is under a federal, state, or local quarantine or</td>
<td>1. Name of the government agency requiring the quarantine/isolation</td>
</tr>
<tr>
<td>isolation order related to COVID-19</td>
<td></td>
</tr>
<tr>
<td>2. The employee has been advised by a health care provider to self-</td>
<td>2. Name of Medical Provider, Medical Certification - Form <a href="#">WH-380-E</a></td>
</tr>
<tr>
<td>quarantine due to concerns related to COVID-19</td>
<td></td>
</tr>
<tr>
<td>3. The employee is experiencing symptoms of COVID-19 and seeking a medical</td>
<td>3. Medical Certification - Form <a href="#">WH-380-E</a></td>
</tr>
<tr>
<td>diagnosis</td>
<td></td>
</tr>
<tr>
<td>4. The employee is caring for an individual who is subject to:</td>
<td>4. Name of individual and relation to Employee, Name of the government agency (#1),</td>
</tr>
<tr>
<td>(#1 subject to a quarantine or isolation order)</td>
<td>Name of Medical Provider (#2), Medical Certification - Form <a href="#2">WH-380-E</a></td>
</tr>
<tr>
<td>(#2 advised to self-quarantine)</td>
<td></td>
</tr>
<tr>
<td>Explanation</td>
<td>Verification Needed</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>5. The employee is caring for the child if the school or place of care,</td>
<td>5. Name and age of Child (Children), Name of school or place of care that closed,</td>
</tr>
<tr>
<td>has been closed, or unavailable, due to COVID–19 precautions</td>
<td>Representation no other person will be providing care for the child (children)</td>
</tr>
<tr>
<td>6. Employee is experiencing similar symptoms of COVID – 19</td>
<td>6. Medical Certification - Form <a href="#">WH-380-E</a></td>
</tr>
<tr>
<td>(Nothing has been currently identified by U.S. Department of Health and</td>
<td></td>
</tr>
<tr>
<td>Human Services (HHS))</td>
<td></td>
</tr>
</tbody>
</table>
Employers must provide the **notice** to all employees

- Post in physical location where other notices are posted
- Email, direct mail or post in company intranet for staff working remotely
- Failure to post could result in a fine
**Intermittent Leave**

Employer and employee must both agree to the terms/schedule

Employees still physically working at the workplace
- Can only be used to care for a child whose school or daycare is closed
- All other reasons, paid time off must be used in consecutively

Employees who are able to telework/work remotely
- Can be used for any qualifying reason
Tracking Time and Payroll

Document the amount of paid sick leave and expanded FMLA wages paid to employee – separate pay codes for
  • Work/telework (productive work)
  • Qualified sick leave
  • Qualified FMLA leave

Document the amount of qualified health plan expenses allocated to wages

Copies of all required forms and documentation from the employee
Employee Rights

• Employers cannot deny qualified employees FFCRA paid leave

• Employers cannot force an employee to use other paid or unpaid leave prior to using FFCRA paid leave

• Employees can supplement FFCRA leave with their own banked leave if the employee and employer agree to it (cannot be required by either)
Grace Period

30 day non-enforcement period expires April 17, 2020

No enforcement of violations if employer
- has made reasonable, good faith efforts to comply with the Act
- has not willfully violated the Act
- has provide a written commitment to future compliance with the Act
- remedies a violation upon notification of the Department of Labor
Failure to comply with the law could result in
• Lost wage benefits
• Liquidated damages
• Attorney fees/court costs
• Complaint filed with the Department of Labor (DOL)
• Private action taken
• Individual liability
Shelter in Place – Who is essential?

Essential Critical Infrastructure Workers

- Communications
- Critical Manufacturing
- Defense Industrial Base
- Emergency Services
- Financial
- Government Facilities
- Energy
- Food & Agriculture
- Information Technology
- Water
- Nuclear Reactors, Materials & Waste
- Transportation Systems
- Healthcare & Public Health
- Chemical
- Commercial Facilities
- Dams
- Financial
- Government Facilities
### FFCRA

- Employer has work but employee is unable to work or telework

### Unemployment

- Employer closes worksite
- Employee is furloughed but employer remains open
- Self – isolation without medical direction
Unemployment Insurance

**Modifications to Existing Unemployment**
- Work searches waived
- COVID-19 related claims not charged to employers
- COVID-19 fact-finding interview waived

**Partial Scheduling Options**
- Furloughed
- Reduced work hours
- Shared workforces
- Shift in work
Questions?

1. What is the difference between an essential employee and an emergency responder?
2. How do we pay an employee who is off for child care for a part-time situation (shared custody)?
3. What happens if an employer wants to pay staff that are off due to no work, in lieu of unemployment? Can it be done for a less essential department and while essential employees still have to work?
Other Questions?