

EMPLOYER REQUIREMENTS FOR FEDERAL PAID SICK LEAVE AND FMLA

The Families First Coronavirus Response Act (FFCRA) became law on March 18, 2020. Among other things, the Act requires employers with “fewer than 500 employees” to provide two new benefits: (1) federal emergency paid sick leave and (2) federal emergency paid family and medical leave (FMLA). Here we will address some of the major requirements of the new law.

Main Points

- ▶ The effective date is April 1 and applies to eligible leave taken between April 1, 2020 and December 31, 2020.
 - ▶ Employers will not be eligible for refundable tax credits for paid time off provided before April 1, 2020. Also, if covered employers have provided paid leave for coronavirus-related reasons before April 1, they are still obligated to provide the two weeks of emergency paid sick leave beginning on April 1 for eligible employees.
 - ▶ Currently-employed individuals who are unable to work should be treated for payroll purposes under companies’ existing paid time off (primarily paid sick leave and vacation) policies prior to April 1. If they qualify for paid time off and have earned/accrued paid time off available, they should receive that. If that’s unavailable or run out, we are not aware of any obligation for an employer to provide additional paid time off UNTIL the new FFCRA regulations take effect.
 - ▶ For employees laid off before April 1, there are no additional requirements of employers that we can see in this new Act.
- ▶ Regarding the calculation of wages, the rate of pay will be based on a six-month average. Overtime premiums are not included in this calculation.
 - ▶ Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA.

Impacted Employers

- ▶ The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers and private employers with fewer than 500 employees.
- ▶ Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern. To elect this small business exemption, employers should document why their business with fewer than 50 employees meets the criteria set forth by the Department of Labor, which will be addressed in more detail in forthcoming regulations.

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Qualifying Reasons for Employee Leave

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

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);
5. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.

Calculation of Pay Based on Reason for Leave

- ▶ For leave reasons (1), (2), or (3): employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a two-week period).
- ▶ For leave reasons (4) or (6): employees taking leave are entitled to pay at 2/3 their 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 two-week period).
- ▶ For leave reason (5): employees taking leave are entitled to pay at 2/3 their 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).

If you have any questions or would like guidance for your specific situation, please contact Terry Bush, SPHR, or Adam Schwelnus, CPA, CGMA, using the contact information shown below. Additional insights related to the business impact of COVID-19 can be found on our website at www.klcpas.com/covid-19-updates-and-resources.

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