



# CORONAVIRUS 2019: EMPLOYER RESOURCE GUIDE

A compilation of government regulatory summaries,  
FAQ, employer sample letters and policies

*Compliments of Emery Benefit Solutions  
– Your Human Resource Specialist*



Available information as of  
April 12, 2020

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# **SECTION ONE**

## **Families First Coronavirus Response Act (FFCRA)**

### **Summaries**

**As of April 12, 2020**

# Families First Coronavirus Response Act

The Families First Coronavirus Response Act was signed into law on March 18, 2020.

In the coming days and weeks, federal regulatory agencies, including the Department of Labor (DOL) and Health and Human Services (HHS), will provide guidance on how to execute or implement the new requirements. In the meantime, employers and advisors must rely on a good faith interpretation of the act's text.

**We are sharing everything we know below and will not be able to answer follow up questions about the act until agency guidance has been released, which will take some time. We will update this page when we have more information, and we encourage you to check here.**

## Summary

For certain circumstances related to COVID-19, employees will be eligible for

- Up to two weeks of sick leave (full pay for self, 2/3 pay for family care) for illness, quarantine, or school closures
- Up to 12 weeks of Family and Medical Leave Act (FMLA) leave for school closures (10 days unpaid and then up to 10 weeks at 2/3 pay)

## Effective Date of Law

- The FMLA and Paid Sick Leave sections discussed below will go into effect on April 1, 2020 and expire December 31, 2020.
- It appears there is no retroactive application.

## Key Elements for Employers

- FMLA expansion
- Paid sick leave
- Payroll tax credit
- Group health plan benefit mandate

## Emergency FMLA Expansion

**Covered Employers:** Employers with fewer than 500 employees are covered.

**Covered Employees:** Any employee who has been employed for at least 30 calendar days, though employers may be able to exclude employees who are health care providers or emergency responders.

**Covered Leave Purpose:** To care for a child under 18 of an employee if the child's school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency, defined as an emergency with respect to the coronavirus declared by a federal, state, or local authority.

**Duration:**

- Up to 12 weeks of job-protected leave.

### **Compensation:**

- No pay for first 10 days of leave (other paid time off, and emergency sick leave under the FFCRA, may be applied)
- After 10 days, employers must pay two thirds of the employee's regular rate of pay for the number of hours they would normally be scheduled to work, capped at \$200/day and \$10,000 total.

### **Reinstatement to Position after Leave:**

The same reinstatement provisions apply as under traditional FMLA. However, restoration to position does not apply to employers with fewer than 25 employees if certain conditions are met:

- 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;
- The employer makes reasonable efforts to return the employee to an equivalent position; and
- The employer makes efforts to contact a displaced employee if anything comes up within a year of when they would have returned to work.

Note: The act reserves the right for the Secretary to exclude certain care providers and first responders from the list of eligible employees and to exempt small businesses with fewer than 50 employees if business viability is jeopardized.

### **Emergency Paid Sick Leave**

**Covered Employers:** Employers with fewer than 500 employees. (An exemption for employers under 50 may be added)

**Covered Employees:** All employees (no matter how long they have been employed), though employers may be able to exclude employees who are health care providers or emergency responders.

### **Covered Leave Purposes:**

1. When quarantined or isolated subject to federal, state, or local quarantine/isolation order;
2. When advised by a health care provider to self-quarantine (due to concerns related to COVID-19);
3. When experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. When caring for an individual doing #1 or #2 (2/3 pay);
5. When caring for a child whose school or place of care is closed due to COVID-19 (2/3 pay); or
6. When the employee is experiencing any other substantially similar condition (2/3 pay).

### **Duration of Leave:**

- Full time employees are entitled to 80 hours of paid sick leave.

- Part time employees are entitled to sick leave equal to the number of hours worked on average over a typical two-week period.

### **Rate of Pay:**

- Sick leave must be paid at the employee's regular rate of pay for leave used for the employee's own illness, quarantine, or care.
- Sick leave must be paid at two-thirds of the employee's regular rate if taken to care for a family member or to care for a child whose school has closed, or if the employee's childcare provider is unavailable due to the coronavirus.
- Pay is capped at \$511/day and \$5,110 total for reasons 1, 2, and 3 described above.
- Pay is capped at \$200/day and \$2,000 total for reasons 4, 5, and 6 described above.

### **Interaction with Other Employer-Provided Paid Sick Leave and other Paid Leave:**

- This act does not preempt existing state and local paid sick leave requirements.
- Employers cannot require employees to use other leave first.
- Sick leave provided for under the act does not carry over from year to year, and the requirements expire December 31, 2020.

### **Notice Requirements:**

- Employers must post a model notice, which will be provided by the federal government.

Note: The act reserves the right for the secretary to exclude certain care providers and first responders from the list of eligible employees and to exempt small businesses with fewer than 50 employees from providing paid leave for child care if business viability is jeopardized.

### **Payroll Tax Credit**

- Applies to both the emergency FMLA expansion and the emergency sick leave.
- Dollar for dollar credit for sick leave and paid FMLA wages against the employer portion of Social Security taxes.
- Refund is possible for amounts that exceed what is available as a credit.
- Limits on what can be claimed mirror the caps for what must be paid.

### **Health Plan Benefit Mandate**

- The act requires all insured and self-funded medical plans, including grandfathered plans, to cover diagnostic testing-related services for COVID-19 at 100 percent without any deductibles or co-pays.
- Examples include services provided by doctors, emergency rooms, and urgent care centers leading up to the decision that testing is needed, along with the actual lab-based testing.
- The mandate does not apply to treatment.

Read US [H.R. 6201](#).

# Employer Paid Leave Requirements

(From the DOL Site <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave> )

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.<sup>[1]</sup> The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date through December 31, 2020.

Generally, the Act provides that covered employers must provide to **all employees**:<sup>[2]</sup>

- *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay* where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or 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, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

A covered employer must provide to **employees that it has employed for at least 30 days**:<sup>[3]</sup>

- *Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay* where an employee 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.

**Covered 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.<sup>[4]</sup> Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

## Qualifying Reasons for 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 child care 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 child care provider is unavailable) for reasons related to COVID-19.

#### **Duration of Leave:**

**For reasons (1)-(4) and (6):** A full-time employee is eligible for up to 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 reason (5):** A full-time employee is eligible for up to 12 weeks of 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.

#### **Calculation of Pay:**[\[5\]](#)

**For leave reasons (1), (2), or (3):** employees taking leave shall be paid 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 2-week period).

**For leave reasons (4) or (6):** employees taking leave shall be paid 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 2-week period).

**For leave reason (5):** employees taking leave shall be paid 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—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).[\[6\]](#)

**Tax Credits:** Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage. For more information, please see the Department of the Treasury's website.

**Employer Notice:** Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements.[\[7\]](#)

**Prohibitions:** 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.

**Penalties and Enforcement:** Employers in violation of the first two weeks' paid sick time or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act. 29 U.S.C. 216; 217. Employers in violation of the

provisions providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or child care provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act. The Department will observe a temporary period of non-enforcement for the first 30 days after the Act takes effect, so long as the employer has acted reasonably and in good faith to comply with the Act. For purposes of this non-enforcement position, “good faith” exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.

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[1] Wage and Hour Division does not administer this aspect of the law, but notes that every dollar of required paid leave (plus the cost of the employer’s health insurance premiums during leave) will be **100%** covered by a dollar-for-dollar refundable tax credit available to the employer. For more information, please see the Department of the Treasury’s website.

[2] Employers of Health Care Providers or Emergency Responders may elect to exclude such employees from eligibility for the leave provided under the Act.

[3] Employers of Health Care Providers or Emergency Responders may elect to exclude such employees from eligibility for the leave provided under the Act.

[4] Certain provisions may not apply to certain employers with fewer than 50 employees. See Department FFCRA regulations (expected April 2020).

[5] Paid sick time provided under this Act does not carry over from one year to the next. Employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement, or other separation from employment.

[6] An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave under this section.

[7] The Department will issue a model notice no later than March 25, 2020.

# How to Pay for Leave Required by Families First Coronavirus Response Act

Including the information in the link below, this is all we currently know about the payroll tax credit under the FFCRA and how to access or administer it. We will update the HR Support Center as soon as new information or guidance is available.

On Friday, March 20, the U.S. Treasury, IRS, and U.S. Department of Labor announced their plans for making the paid leave provisions in the Families First Coronavirus Response Act (FFCRA) less burdensome for small businesses. Key points include:

- 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 that will be released next week.
- The Department of Labor will release “simple and clear” criteria for businesses with fewer than 50 employees to apply for exemptions from the leave provisions related to school and childcare closures; and
- There will be a 30-day non-enforcement period for businesses making a reasonable effort.

We know that for many of our clients, business slowdowns related to the spread of COVID-19 have made it hard to imagine how they could bear any additional expenses. We encourage anyone with these concerns to read the linked announcement carefully.

The full announcement can be found [here](#) and below.

Today (March 20) the U.S. Treasury Department, Internal Revenue Service (IRS), and the U.S. Department of Labor (Labor) announced that small and midsize employers can begin taking advantage of two new refundable payroll tax credits, designed to immediately and fully reimburse them, dollar-for-dollar, for the cost of providing Coronavirus-related leave to their employees. The legislation will enable employers to keep their workers on their payrolls, while at the same time ensuring that workers are not forced to choose between their paychecks and the public health measures needed to combat the virus.

## Key Takeaways

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 that will be released next week.

- **Paid Sick Leave for Workers**

For COVID-19 related reasons, employees receive up to 80 hours of paid sick leave and expanded paid child care leave when employees' children's schools are closed or child care providers are unavailable.

- **Complete Coverage**

Employers receive 100% reimbursement for paid leave pursuant to the Act.

- Health insurance costs are also included in the credit.

- Employers face no payroll tax liability.
- Self-employed individuals receive an equivalent credit.

- **Fast Funds**

Reimbursement will be quick and easy to obtain.

- An immediate dollar-for-dollar tax offset against payroll taxes will be provided
- Where a refund is owed, the IRS will send the refund as quickly as possible.

- **Small Business Protection**

Employers with fewer than 50 employees are eligible for an exemption from the requirements to provide leave to care for a child whose school is closed, or child care is unavailable in cases where the viability of the business is threatened.

- **Easing Compliance**

Requirements are subject to 30-day non-enforcement period for good faith compliance efforts.

## **Prompt Payment for the Cost of Providing Leave**

When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns ([Form 941](#) series) with the IRS.

Under guidance that will be released next week, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.

The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. The details of this new, expedited procedure will be announced next week.

### **Examples**

If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.

If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.

Equivalent child care leave and sick leave credit amounts are available to self-employed individuals under similar circumstances. These credits will be claimed on their income tax return and will reduce estimated tax payments.

## **Small Business Exemption**

Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or child care unavailability where the requirements would jeopardize the ability of the business to continue. The exemption will be available on the basis of simple and clear criteria that make it available in circumstances involving jeopardy to the viability of an employer's business as a going concern. Labor will provide emergency guidance and rulemaking to clearly articulate this standard.

## **Non-Enforcement Period**

Labor will be issuing a temporary non-enforcement policy that provides a period of time for employers to come into compliance with the Act. Under this policy, Labor will not bring an enforcement action against any employer for violations of the Act so long as the employer has acted reasonably and in good faith to comply with the Act. Labor will instead focus on compliance assistance during the 30-day period.

## **For More Information**

For more information about these credits and other relief, visit [Coronavirus Tax Relief](#) on IRS.gov. Information regarding the process to receive an advance payment of the credit will be posted next week.

## **Background on the Leaves and Pay That Must be Provided**

The Act provided paid sick leave and expanded family and medical leave for COVID-19 related reasons and created the refundable paid sick leave credit and the paid child care leave credit for eligible employers. Eligible employers are businesses and tax-exempt organizations with fewer than 500 employees that are required to provide emergency paid sick leave and emergency paid family and medical leave under the Act. Eligible employers will be able to claim these credits based on qualifying leave they provide between the effective date and December 31, 2020. Equivalent credits are available to self-employed individuals based on similar circumstances.

## **Paid Leave**

The Act provides that employees of eligible employers can receive two weeks (up to 80 hours) of paid sick leave at 100% of the employee's pay where the employee is unable to work because the employee is quarantined, and/or experiencing COVID-19 symptoms, and seeking a medical diagnosis. An employee who is unable to work because of a need to care for an individual subject to quarantine, to care for a child whose school is closed or child care provider is unavailable for reasons related to COVID-19, and/or the employee is experiencing substantially similar conditions as specified by the U.S. Department of Health and Human Services can receive two weeks (up to 80 hours) of paid sick leave at 2/3 the employee's pay. An employee who is unable to work due to a need to care for a child whose school is closed, or child care provider is unavailable for reasons related to COVID-19, may in some instances receive up to an additional ten weeks of expanded paid family and medical leave at 2/3 the employee's pay.

## **Paid Sick Leave Credit**

For an employee who is unable to work because of Coronavirus quarantine or self-quarantine or has Coronavirus symptoms and is seeking a medical diagnosis, eligible employers may receive a refundable sick leave credit for sick leave at the employee's regular rate of pay, up to \$511 per day and \$5,110 in the aggregate, for a total of 10 days.

For an employee who is caring for someone with Coronavirus, or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to the Coronavirus, eligible employers may claim a credit for two-thirds of the employee's regular rate of pay, up to \$200 per day and \$2,000 in the aggregate, for up to 10 days. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

## **Child Care Leave Credit**

In addition to the sick leave credit, for an employee who is unable to work because of a need to care for a child whose school or child care facility is closed or whose child care provider is unavailable due to the Coronavirus, eligible employers may receive a refundable child care leave credit. This credit is equal to two-thirds of the employee's regular pay, capped at \$200 per day or \$10,000 in the aggregate. Up to 10 weeks of qualifying leave can be counted towards the child care leave credit. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

[For More Information](#) For more information about these credits and other relief, visit [Coronavirus Tax Relief](#) on IRS.gov. Information regarding the process to receive an advance payment of the credit will be posted next week. Agency Office of the Secretary Date March 20, 2020 Release Number 20-505-NAT **Contact:** Department of Labor National Contact Center Email [DOL-Info@dol.gov](mailto:DOL-Info@dol.gov)

# Employer Expanded Family and Medical Leave Act (FMLA) Requirements

The Family and Medical Leave Act (FMLA) entitles eligible employees of employers that have 50 or more employees to take unpaid, job-protected leave for certain family and medical reasons.

## Leave Duration and Reasons for Leave

Employees are entitled to 12 workweeks of leave in a 12-month period for the following reasons:

- The birth of a child and to care for the newborn child within one year of birth;
- The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- To care for the employee's spouse, child, or parent who has a serious health condition;
- A "serious health condition" that makes the employee unable to perform the essential functions of his or her job;
- Any qualifying exigency because the employee's spouse, son, daughter, or parent is a military member on active duty.

A "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

The "continuing treatment" test for a serious health condition under the regulations may be met through:

1. A period of incapacity of more than three consecutive, full calendar days plus treatment by a health care provider twice, or once with a continuing regimen of treatment,
2. Any period of incapacity related to pregnancy or for prenatal care,
3. Any period of incapacity or treatment for a chronic serious health condition,
4. A period of incapacity for permanent or long-term conditions for which treatment may not be effective,
5. Any period of incapacity to receive multiple treatments (including recovery from those treatments) for restorative surgery, or
6. A condition which would likely result in an incapacity of more than three consecutive, full calendar days absent medical treatment.

The regulations specify that if an employee asserts a serious health condition under the requirement of a "period of incapacity of more than three consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition," the employee's first treatment visit (or only visit, if coupled with a regimen of continuing treatment) must take place within seven days of the first day of incapacity. Additionally, if an employee asserts that the condition involves "treatment two or more times," the two visits to a health care provider must occur within 30 days of the first day of incapacity. Finally, the regulations define "periodic visits" for treatment of a chronic serious health condition as at least twice a year.

Employees are entitled to 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the employee is the servicemember's spouse, son, daughter, parent, or next of kin.

Regardless of the reason for leave, an employee is not entitled to more than 26 workweeks of FMLA leave. Special rules apply if spouses have the same employer.

If medically necessary, the employee is entitled to take their leave intermittently or on a reduced schedule. For example, a pregnant employee may take small blocks of leave for prenatal examinations or for her own condition, such as periods of severe morning sickness.

## **Employee Eligibility**

To be eligible, an employee must satisfy all of these conditions:

- Work at a location where the employer has at least 50 employees within 75 miles;
- Have worked for the employer for at least 12 months; *and*
- Work at least 1,250 hours in the previous 12 months before taking leave.

## **Benefits and Protections**

While on leave, an employee's group health insurance coverage must be continued under the same terms and conditions as if they had not taken leave.

Employees may choose or an employer may require them to use accrued paid leave concurrently with their FMLA leave. Employers may not prevent employees from using accrued paid leave.

After their leave, the employee must be reinstated to their position or a position with equivalent pay and benefits. Limited exceptions apply.

## **Requesting Leave**

Employees only need to provide enough information so that the employer knows that the leave might qualify under FMLA. The employer is responsible for designating the leave as FMLA. If they do not have enough information, they should ask the employee for additional information.

If the leave qualifies under FMLA, the employer must notify the employee in writing whether they are eligible within five business days. At the same time, the employer must provide a notice of rights and responsibilities. The US Department of Labor (DOL) provides an acceptable form [here](#).

They must also provide a notice of whether and how much leave is designated as FMLA. The DOL provides an acceptable designation notice [here](#).

If the employee is not eligible, the employer must state why they are not eligible.

## **Certification**

The employer may require that the employee provide documentation supporting their need for leave. The US Department of Labor provides an acceptable certification form available [here](#).

If the certification is incomplete or seems suspicious, several mechanisms are available to help the employer investigate, such as asking the doctor to clarify their responses, sending the employee to get a second opinion, or requesting recertification under certain circumstances. Employers should be cautious in requiring these extra steps since they may appear retaliatory.



## Recordkeeping Requirements

Employers must keep the following records for at least three years:

- Payroll and employee data
- Dates (or hours) of each employee's FMLA leave
- Notices received from employees
- Notices given to employees
- Documents describing employee benefits or the employer's policies and practices regarding paid and unpaid leaves
- Premium payments of employee benefits
- Documents related to any dispute between the employer and an employee regarding FMLA designation

## Notice

Employers with 50 or more employees must post the FMLA poster even if no employees are eligible. If they have eligible employees, the employers must also provide information about FMLA in writing to each employee individually, such as in a handbook.

## Interference and Retaliation

Employers may not interfere with an employee's FMLA leave. In addition, employers may not retaliate against them for requesting or taking FMLA or for opposing an unlawful practice regarding FMLA.

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[1] Wage and Hour Division does not administer this aspect of the law, but notes that every dollar of expanded family and medical leave (plus the cost of the employer's health insurance premiums during leave) will be **100%** covered by a dollar-for-dollar refundable tax credit available to the employer. For more information, please see the Department of the Treasury's website.

[2] Employers of Health Care Providers or Emergency Responders may elect to exclude such employees from eligibility for the leave provided under the Act.

[3] Employers of Health Care Providers or Emergency Responders may elect to exclude such employees from eligibility for the leave provided under the Act.

[4] Certain provisions may not apply to certain employers with fewer than 50 employees. See Department FFCRA regulations (expected April 2020).

[5] Expanded family and medical leave provided under this Act does not carry over from one year to the next. Employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement, or other separation from employment.

[6] An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial expanded family and medical leave under this section.

[7] The Department will issue a model notice no later than March 25, 2020.

# New FFCRA Guidance in Temporary Rule and FAQs

The DOL has [released rules](#) related to administration of leaves under the Families First Coronavirus Response Act (FFCRA) and answered more common questions on their [Questions and Answers page](#). Below are some key highlights to keep in mind when administering these leaves. We also recommend reading our [summary of the FFCRA](#) if you have not already done so.

- **Documentation:** Employers may not require more documentation from employees than is described below. For instance, employers may not request a doctor's note or an official notice from a closed school or daycare.
- **Childcare Provider:** The definition of childcare provider includes anyone who generally cares for the children in question. This includes individuals paid to provide childcare, like nannies, au pairs, and babysitters, as well as individuals who provide childcare at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or a neighbor.
- **Reasons for Self-Quarantine:** Employees are only eligible for EPSL if a health care provider directs or advises them to self-quarantine because the health care provider believes the employee may have COVID-19 or is particularly vulnerable to COVID-19.
- **EPSL due to Stay-at-Home Orders:** In some narrow circumstances, an employee who is subject to a stay-at-home order may be able to receive EPSL. They will only be eligible if the business is open and has work for them to do, but a stay-at-home order that applies specifically to them as an individual prevents them from working. For instance, if the retail store where an employee works as a cashier is still open, but the employee is over 65 and subject to an executive order from their governor that all people over 65 should stay home, they would be eligible for EPSL.
- **Exempt Healthcare Workers:** The exemption for healthcare workers is optional and the DOL encourages employers to be judicious in denying leave (if someone is sick with something that looks like COVID-19, you are encourage to provide them leave anyway, even if they could be exempted). Healthcare facilities should still post the [Employee Rights Poster](#) required by the FFCRA.
- **Limited Small Employer Exemption:** Although this is not new information, we want to reiterate that small employers are only potentially exempt from the childcare leaves provided by EPSL and EFMLA. For instance, one reason for exemption is that providing leave would cause the employer to cease functioning at a minimal capacity. If a single employee asks for intermittent childcare leave one day per week, but can telework the other four days, that is very unlikely to be a financial burden that causes the employer to cease operations. It would therefore be inappropriate (or illegal) for an employer to announce that they will not be considering or granting any childcare leaves.

## IRS Guidance on Required Documentation for Leave Tax Credits

Employers have been anxious to find out what kind of documentation they will need to claim a payroll tax credit. The documentation that can be requested of employees is listed below. The IRS has a very helpful [overview and FAQ](#) that covers other common questions about the tax credits in detail.

Employers can substantiate eligibility for the sick leave or family leave credits by receiving a written request from the employee that includes the following:

1. Their name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason they are requesting leave and written support for such reason; and
4. A statement that they are unable to work, including by means of telework, for such reason.

For leave based on a quarantine order or self-quarantine advice, the request should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine. If the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee should be included.

For leave request based on a school closing or child care provider unavailability, the statement should include the name and age of the child (or children) to be cared for, the name of the school or place of care that has closed, and a representation that no other person will be providing care for the child during the leave. If a child who needs care is 15 or older, the employee must affirm that there are special circumstances (but need not explain them) – the IRS otherwise assumes kids 15 and older can take care of themselves for the length of a workday.

According to the DOL, this is the extent of the documentation you may require.

We have an EPSL and EFMLA Leave Request Form on page 67 that asks employees for the information necessary based on their reason for leave.

# COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs

The Families First Coronavirus Response Act (the "FFCRA"), signed by President Trump on March 18, 2020, provides small and midsize employers refundable tax credits that reimburse them, dollar-for-dollar, for the cost of providing paid sick and family leave wages to their employees for leave related to COVID-19.

The FFCRA gives businesses with fewer than 500 employees (referred to throughout these FAQs as "Eligible Employers") funds to provide employees with paid sick and family and medical leave for reasons related to COVID-19, either for the employee's own health needs or to care for family members. Workers may receive up to 80 hours of paid sick leave for their own health needs or to care for others and up to an additional ten weeks of paid family leave to care for a child whose school or place of care is closed or child care provider is closed or unavailable due to COVID-19 precautions. The FFCRA covers the costs of this paid leave by providing small businesses with refundable tax credits. Certain self-employed individuals in similar circumstances are entitled to similar credits.

For a more detailed overview of the law, see "Overview of COVID-19-Related Tax Credits for Small and Midsize Businesses," below.

For FAQs, see "[Basic FAQs](#)," and the sections that follow. The FAQs will be updated to address changes in the law or additional questions as they are raised.

## Overview of COVID-19-Related Tax Credits for Small and Midsize Businesses

The FFCRA requires employers to provide paid leave through two separate provisions: (i) the Emergency Paid Sick Leave Act (EPSLA), which entitles workers to up to 80 hours of paid sick time when they are unable to work for certain reasons related to COVID-19, and (ii) the Emergency Family and Medical Leave Expansion Act (Expanded FMLA), which entitles workers to certain paid family and medical leave. The FFCRA provides that employers subject to the EPSLA and the Expanded FMLA paid leave requirements are entitled to fully refundable tax credits to cover the cost of the leave required to be paid for these periods of time during which employees are unable to work (which for purposes of these rules, includes telework). Certain self-employed persons in similar circumstances are entitled to similar credits.

The following section provides an overview of FFCRA's refundable tax credit provisions, and the FAQs that follow provide more detailed information regarding the requirements, limitations, and application of the paid leave credits. The Wage and Hour Division of the Department of Labor (DOL) administers the EPSLA and the Expanded FMLA and has posted FAQs and relevant information about the paid leave requirements at the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#).

Eligible Employers are entitled to refundable tax credits for qualified sick leave wages and qualified family leave wages (collectively "qualified leave wages"), under sections 7001 and 7003 of the FFCRA respectively. These tax credits are increased by the qualified health plan expenses allocable to, and the Eligible Employer's share of Medicare tax on, the qualified leave wages. Eligible Employers are businesses and tax-exempt organizations with fewer than 500 employees that are required to provide

paid sick leave under the EPSLA and to provide paid family leave under the Expanded FMLA (note that although the FFCRA requires most government employers to provide paid leave, it does not entitle those governmental employers to tax credits for this leave). For more information about Eligible Employers, see [“What employers may claim the tax credits?”](#) Under sections 7002 and 7004 of the FFCRA, self-employed individuals are entitled to equivalent credits based on similar circumstances in which the individual is unable to work. For more information about how self-employed individuals can claim the credits see [“Specific Provisions Related to Self-Employed Individuals”](#). The refundable tax credits apply to qualified sick leave wages and qualified family leave wages paid for certain periods when an employee is unable to work, as described below, during the period beginning April 1, 2020, and ending December 31, 2020. The same period is used to determine credits for qualified sick leave equivalent amounts and qualified family leave equivalent amounts for certain self-employed individuals.

## **Overview of Paid Sick Leave Refundable Credit**

The EPSLA requires Eligible Employers to provide employees with paid sick leave if the employee is unable to work (including telework) due to any of the following:

1. the employee is under 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 has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. the employee is caring for the child of such employee if the school or place of care of the child has been closed, or the child care provider of such child is unavailable, due to COVID-19 precautions;
6. the employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

An employee who is unable to work for reasons due to a COVID-19 circumstance described in (1), (2) or (3) above is entitled to paid sick leave for up to two weeks (up to 80 hours) at the employee’s regular rate of pay, or, if higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$511 per day and \$5,110 in the aggregate. For more information, see [“What is the rate of pay for qualified sick leave wages if an employee is unable to work due to their own health needs?”](#)

An employee who is unable to work due to a COVID-19 circumstance described in (4), (5) or (6) above is entitled to paid sick leave for up to two weeks (up to 80 hours) at 2/3 the employee’s regular rate of pay or, if higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$200 per day and \$2,000 in the aggregate. For more information, see [“What is the rate of pay for qualified sick leave wages if an employee is unable to work because he or she needs to care for others?”](#)

The Eligible Employer is entitled to a fully refundable tax credit equal to the required paid sick leave. This tax credit also includes the Eligible Employer’s share of Medicare tax imposed on those wages and its allocable cost of maintaining health insurance coverage for the employee during the sick leave period (qualified health plan expenses). The Eligible Employer is not subject to the employer portion of social security tax imposed on those wages. (Eligible Employers subject to the Railroad Retirement Tax Act are not subject to either social security tax or Medicare tax on the qualified sick leave wages; accordingly, they do not get a credit for Medicare tax.)

## Overview of Paid Family Leave Refundable Credit

In addition to the paid sick leave credit, under the expanded FMLA, an employee who is unable to work (including telework) because of a need to care for a child whose school or place of care is closed or whose child care provider is unavailable due to COVID-19, as described in (5) above, is entitled to paid family and medical leave equal to two-thirds of the employee's regular pay, up to \$200 per day and \$10,000 in the aggregate. Up to ten weeks of qualifying leave can be counted towards the family leave credit. For more information, see ["What is included in "qualified family leave wages"?"](#)

The Eligible Employer is entitled to a fully refundable tax credit equal to the required paid family and medical leave (qualified family leave wages). This tax credit also includes the Eligible Employer's share of Medicare tax imposed on those wages and its cost of maintaining health insurance coverage for the employee during the family leave period (qualified health plan expenses). The Eligible Employer is not subject to the employer portion of social security tax imposed on those wages. (Eligible Employers subject to the Railroad Retirement Tax Act are not subject to either social security tax or Medicare tax on the qualified family leave wages; accordingly, they do not get a credit for Medicare tax.) For more information, see ["How does an Eligible Employer determine the amounts of the qualified family leave wages it is required to pay?"](#)

## Payment of the Sick and Family Leave Credit

Eligible Employers are entitled to receive a credit in the full amount of the qualified sick leave wages and qualified family leave wages, plus allocable qualified health plan expenses and the employer's share of Medicare tax, paid for leave during the period beginning April 1, 2020, and ending December 31, 2020. The credit is allowed against the taxes imposed on employers by section 3111(a) of the Internal Revenue Code (the "Code") (the Old-Age, Survivors, and Disability Insurance tax (social security tax)) and section 3221(a) of the Code (the Railroad Retirement Tax Act Tier 1 rate) on all wages and compensation paid to all employees. If the amount of the credit exceeds the employer portion of these federal employment taxes, then the excess is treated as an overpayment and refunded to the employer under sections 6402(a) or 6413(a) of the Code. The qualified sick leave wages and qualified family leave wages are not subject to the taxes imposed on employers by sections 3111(a) and 3221(a) of the Code and employers (other than those that are subject to the Railroad Retirement Tax Act) are entitled to an additional credit for the taxes on employers imposed by section 3111(b) of the Code (Hospital Insurance (Medicare tax)) on such wages.

Eligible Employers that pay qualified leave wages will be able to retain an amount of all federal employment taxes equal to the amount of the qualified leave wages paid, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages, rather than depositing them with the IRS. The federal employment taxes that are available for retention by Eligible Employers include federal income taxes withheld from employees, the employees' share of social security and Medicare taxes, and the employer's share of social security and Medicare taxes with respect to all employees.

If the federal employment taxes yet to be deposited are not sufficient to cover the Eligible Employer's cost of qualified leave wages, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages, the employer will be able file a request for an advance payment from the IRS. The IRS expects to begin processing these requests in April 2020.

Eligible Employers claiming the credits for qualified leave wages , plus allocable qualified health plan expenses and the Eligible Employer's share of Medicare taxes, must retain records and documentation related to and supporting each employee's leave to substantiate the claim for the credits, as well

retaining the Forms 941, Employer's Quarterly Federal Tax Return, and 7200, Advance of Employer Credits Due To COVID-19, and any other applicable filings made to the IRS requesting the credit.

For more detail on the refundable tax credits and the procedures to receive payment of the advance credit, see "[How to Claim the Credits.](#)"

Eligible Employers claiming the credits for qualified leave wages , plus allocable qualified health plan expenses and the Eligible Employer's share of Medicare taxes, must retain records and documentation related to and supporting each employee's leave to substantiate the claim for the credits, as well retaining the Forms 941, Employer's Quarterly Federal Tax Return, and 7200, Advance of Employer Credits Due To COVID-19, and any other applicable filings made to the IRS requesting the credit.

For more detail on the refundable tax credits and the procedures to receive payment of the advance credit, see "[How to Claim the Credits.](#)"

## EEOC Guidance for Employers During a Pandemic

The spread of the Coronavirus (COVID-19) has employers rightly concerned about how to handle threats of contagion in the workplace. Along with those worries come concerns about violating other laws in the process of trying to keep the workplace safe. Specifically, the ADA comes to mind; if we send someone home who appears sick, have we then discriminated against someone with a disability? Thankfully, the Equal Employment Opportunity Commission (EEOC) has answered a number of common questions that employers are asking. We've pulled out those we think are most relevant, below, but the full EEOC Pandemic Preparedness webpage can be [found here](#).

**As of March 11, 2020, COVID-19 has been declared a pandemic.**

FROM THE EEOC:

The following questions and answers discuss employer actions when the WHO and the CDC report an influenza pandemic.

- **May an ADA-covered employer send employees home if they display influenza-like symptoms during a pandemic?**

Yes. The CDC states that employees who become ill with symptoms of influenza-like illness at work during a pandemic should leave the workplace. Advising such workers to go home is not a disability-related action if the illness is akin to seasonal influenza or the 2009 spring/summer H1N1 virus. Additionally, the action would be permitted under the ADA if the illness were serious enough to pose a direct threat.

- **During a pandemic, how much information may an ADA-covered employer request from employees who report feeling ill at work or who call in sick?**

ADA-covered employers may ask such employees if they are experiencing influenza-like symptoms, such as fever or chills and a cough or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

If pandemic influenza is like seasonal influenza or spring/summer 2009 H1N1, these inquiries are not disability-related. If pandemic influenza becomes severe, the inquiries, even if disability-related, are justified by a reasonable belief based on objective evidence that the severe form of pandemic influenza poses a direct threat.

- **During a pandemic, may an ADA-covered employer take its employees' temperatures to determine whether they have a fever?**

Generally, measuring an employee's body temperature is a medical examination. If pandemic influenza symptoms become more severe than the seasonal flu or the H1N1 virus in the spring/summer of 2009, or if pandemic influenza becomes widespread in the community as assessed by state or local health authorities or the CDC, then employers may measure employees' body temperature. However, employers should be aware that some people with influenza, including the 2009 H1N1 virus, do not have a fever.

- **When an employee returns from travel during a pandemic, must an employer wait until the employee develops influenza symptoms to ask questions about exposure to pandemic influenza during the trip?**



No. These would not be disability-related inquiries. If the CDC or state or local public health officials recommend that people who visit specified locations remain at home for several days until it is clear they do not have pandemic influenza symptoms, an employer may ask whether employees are returning from these locations, even if the travel was personal.<sup>(31)</sup>

- **May an employer encourage employees to telework (i.e., work from an alternative location such as home) as an infection-control strategy during a pandemic?**

Yes. Telework is an effective infection-control strategy that is also familiar to ADA-covered employers as a reasonable accommodation.<sup>(35)</sup>

In addition, employees with disabilities that put them at high risk for complications of pandemic influenza may request telework as a reasonable accommodation to reduce their chances of infection during a pandemic.

- **During a pandemic, may an employer require its employees to adopt infection-control practices, such as regular hand washing, at the workplace?**

Yes. Requiring infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal, does not implicate the ADA.

- **During a pandemic, may an employer require its employees to wear personal protective equipment (e.g., face masks, gloves, or gowns) designed to reduce the transmission of pandemic infection?**

Yes. An employer may require employees to wear personal protective equipment during a pandemic. However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, or gowns designed for individuals who use wheelchairs), the employer should provide these, absent undue hardship.

- **During a pandemic, may an employer ask an employee why he or she has been absent from work if the employer suspects it is for a medical reason?**

Yes. Asking why an individual did not report to work is not a disability-related inquiry. An employer is always entitled to know why an employee has not reported for work.

- **May an ADA-covered employer require employees who have been away from the workplace during a pandemic to provide a doctor's note certifying fitness to return to work**

Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees.

As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

## **SECTION TWO**

# **Families First Coronavirus Response Act**

## **Department of Labor: Wage and Hour**

### **Questions and Answers**

**As of April 7, 2020**

# Families First Coronavirus Response Act: Questions and Answers

This section is continually updated on the DOL website

As provided under the legislation, the U.S. Department of Labor will be issuing implementing regulations. Additionally, as warranted, the Department will continue to provide compliance assistance to employers and employees on their responsibilities and rights under the FFCRA.

## DEFINITIONS

**“Paid sick leave”** – means paid leave under the Emergency Paid Sick Leave Act.

**“Expanded family and medical leave”** – means paid leave under the Emergency Family and Medical Leave Expansion Act.

## QUESTIONS & ANSWERS

1. **What is the effective date of the Families First Coronavirus Response Act (FFCRA), which includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act?**

The FFCRA’s paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.

2. **As an employer, how do I know if my business is under the 500-employee threshold and therefore must provide paid sick leave or expanded family and medical leave?**

You have fewer than 500 employees if, at the time your employee’s leave is to be taken, you employ fewer than 500 full-time and part-time employees within the United States, which includes any State of the United States, the District of Columbia, or any Territory or possession of the United States. In making this determination, you should include employees on leave; 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); and 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). Workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than [employees](#), are not considered employees for purposes of the 500-employee threshold.

Typically, a corporation (including its separate establishments or divisions) is considered to be a single employer and its employees must each be counted towards the 500-employee threshold. Where a corporation has an ownership interest in another corporation, the two corporations are separate employers unless they are [joint employers under the FLSA](#) with respect to certain employees. If two entities are found to be joint employers, all of their common employees must be counted in determining whether paid sick leave must be provided under the Emergency Paid Sick Leave Act and expanded family and medical leave must be provided under the Emergency Family and Medical Leave Expansion Act.

In general, two or more entities are separate employers unless they meet the [integrated employer test](#) under the Family and Medical Leave Act of 1993 (FMLA). If two entities are an integrated employer under the FMLA, then employees of all entities making up the integrated

employer will be counted in determining employer coverage for purposes of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act.

**3. If I am a private sector employer and have 500 or more employees, do the Acts apply to me?**

No. Private sector employers are only required to comply with the Acts if they have fewer than 500 employees.[\[1\]](#)

**4. If providing child care-related paid sick leave and expanded family and medical leave at my business with fewer than 50 employees would jeopardize the viability of my business as a going concern, how do I take advantage of the small business exemption?**

To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.

You should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.

**5. How do I count hours worked by a part-time employee for purposes of paid sick leave or expanded family and medical leave?** A part-time employee is entitled to leave for his or her average number of work hours in a two-week period. Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work. If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. Such a part-time employee may take paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that.

If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that you and your employee agreed that the employee would work upon hiring. And if there is no such agreement, you may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment.

**6. When calculating pay due to employees, must overtime hours be included?**

Yes. The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

However, the Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.

If the employee's schedule varies from week to week, please see the answer to Question 5, because the calculation of hours for a full-time employee with a varying schedule is the same as that for a part-time employee.

Please keep in mind the daily and aggregate caps placed on any pay for paid sick leave and expanded family and medical leave as described in the answer to Question 7.

Please note that pay does not need to include a premium for overtime hours under either the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act.

**7. As an employee, how much will I be paid while taking paid sick leave or expanded family and medical leave under the FFCRA?**

It depends on your normal schedule as well as why you are taking leave.

If you are taking paid sick leave because you are unable to work or telework due to a need for leave because you (1) are subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (2) have been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (3) are experiencing symptoms of COVID-19 and are seeking medical diagnosis, you will receive for each applicable hour the greater of:

- your [regular rate of pay](#),
- the federal minimum wage in effect under the FLSA, or
- the applicable State or local minimum wage.

In these circumstances, you are entitled to a maximum of \$511 per day, or \$5,110 total over the entire paid sick leave period.

If you are taking paid sick leave because you are: (1) 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 concerns related to COVID-19; (2) caring for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or (3) experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services, you are entitled to compensation at 2/3 of the greater of the amounts above.

Under these circumstances, you are subject to a maximum of \$200 per day, or \$2,000 over the entire two week period.

If you are taking expanded family and medical leave, you may take paid sick leave for the first ten days of that leave period, or you may substitute any accrued vacation leave, personal leave, or medical or sick leave you have under your employer's policy. For the following ten weeks, you will be paid for your leave at an amount no less than 2/3 of your [regular rate of pay](#) for the hours you would be normally scheduled to work. The [regular rate of pay](#) used to calculate this amount must be at or above the federal minimum wage, or the applicable state or local minimum wage. However, you will not receive more than \$200 per day or \$12,000 for the twelve weeks that include both paid sick leave and expanded family and medical leave when you are on leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

To calculate the number of hours for which you are entitled to paid leave, please see the answers to Questions 5-6 that are provided in this guidance.

**8. What is my regular rate of pay for purposes of the FFCRA?**

For purposes of the FFCRA, the regular rate of pay used to calculate your paid leave is the average of your [regular rate](#) over a period of up to six months prior to the date on which you take leave.<sup>[2]</sup> If you have not worked for your current employer for six months, the regular rate used to calculate your paid leave is the average of your regular rate of pay for each week you have worked for your current employer.

If you are paid with commissions, tips, or piece rates, these wages will be incorporated into the above calculation.

You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

**9. May I take 80 hours of paid sick leave for my self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?**

No. You may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons. However, the total number of hours for which you receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

**10. If I am home with my child because his or her school or place of care is closed, or child care provider is unavailable, do I get paid sick leave, expanded family and medical leave, or both—how do they interact?**

You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both paid sick leave and expanded family and medical leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless the you elect to use existing vacation, personal, or medical or sick leave under your employer's policy. After the first ten workdays have elapsed, you will receive 2/3 of your [regular rate of pay](#) for the hours you would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.

Please note that you can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act for leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

**11. Can my employer deny me paid sick leave if my employer gave me paid leave for a reason identified in the Emergency Paid Sick Leave Act prior to the Act going into effect?**

No. The Emergency Paid Sick Leave Act imposes a new leave requirement on employers that is effective beginning on April 1, 2020.

**12. Is all leave under the FMLA now paid leave?**

No. The only type of family and medical leave that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

**13. Are the paid sick leave and expanded family and medical leave requirements retroactive?**

No.

**14. How do I know whether I have “been employed for at least 30 calendar days by the employer” for purposes of expanded family and medical leave?**

You are considered to have been employed by your employer for at least 30 calendar days if your employer had you on its payroll for the 30 calendar days immediately prior to the day your leave would begin. For example, if you want to take leave on April 1, 2020, you would need to have been on your employer’s payroll as of March 2, 2020.

If you have been working for a company as a temporary employee, and the company subsequently hires you on a full-time basis, you may count any days you previously worked as a temporary employee toward this 30-day eligibility period.

**79. Does the non-enforcement position mean businesses do not need to comply with the FFCRA from the effective date of April 1, 2020 through April 17, 2020?**

No, the FFCRA’s paid leave provisions are effective April 1, 2020. Private sector and public employers must comply with the provisions on the effective date even though the Department has a limited stay of enforcement until April 17, 2020. Once the Department fully enforces the Act, it will retroactively enforce violations back until the effective date of April 1, 2020, if employers have not remedied the violations.

**Additional 64 Questions answered** <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

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[1] If you are a Federal employee, you are eligible to take paid sick leave under the Emergency Paid Sick Leave Act. But only some Federal employees are eligible to take expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act. Your eligibility will depend on whether you are covered under Title I or Title II of the Family Medical Leave Act. The Department encourages Federal employees to discuss questions about their eligibility for expanded family and medical leave with their employers or with the Office of Personnel Management. Additional FAQs regarding public sector employers will be forthcoming.

[2] If you are a Federal employee, the State or local minimum wage would be used to calculate the wages owed to you only if the Federal agency that employs you has broad authority to set your compensation and has decided to use the State or local minimum wage.

# COVID-19 and the Fair Labor Standards Act

## Questions and Answers

**If your business has a shortage of workers and is looking to “volunteers” to help out,** be aware that the [Fair Labor Standards Act](#) (FLSA) has stringent requirements with respect to the use of volunteers. In general, [covered](#), [nonexempt](#) workers working for private, for-profit employers have to be paid at least the minimum wage and cannot volunteer their services. Check with DOL for the rules governing the circumstances where volunteering in the public and private, non-profit sectors may be allowed.

**If you have been laid off and have not received your last paycheck,** immediate payment may be required by state law (although it is not required by federal law). If your regular payday has passed without payment, contact the DOL’s [Wage and Hour Division](#) or your [state labor office](#).

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**How many hours is an employer obligated to pay an hourly-paid employee who works a partial week because the employer’s business closed?**

The FLSA generally applies to hours actually worked. It does not require employers who are unable to provide work to [non-exempt employees](#) to pay them for hours the employees would have otherwise worked.

**If an employer directs salaried, exempt employees to take vacation (or leave bank deductions) or leave without pay during office closures due to influenza, pandemic, or other public health emergency, does this impact the employee’s exempt status?**

Exempt, salaried employees generally must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions. The FLSA does not require employer-provided vacation time. Where an employer offers a bona fide benefits plan or vacation time to its employees, there is no prohibition on an employer requiring that such accrued leave or vacation time be taken on a specific day(s). Further, this will not affect the employee’s salary basis of payment so long as the employee still receives in payment an amount equal to the employee’s guaranteed salary. However, an employee will not be considered paid “on a salary basis” if deductions from the predetermined compensation are made for absences occasioned by the office closure during a week in which the employee performs any work. Exempt salaried employees are not required to be paid their salary in weeks in which they perform no work.

Therefore, a private employer may direct exempt staff to take vacation or debit their leave bank account in the case of an office closure, whether for a full or partial day, provided the employees receive in payment an amount equal to their guaranteed salary. In the same scenario, an exempt employee who has no accrued benefits in the leave bank account, or has limited accrued leave and the reduction would result in a negative balance in the leave bank account, still must receive the employee’s guaranteed salary for any absence(s) occasioned by the office closure in order to remain exempt. For more information, see [WHD Opinion Letter FLSA2005-41](#).



## **What are an employer's obligations to an employee who is under government-imposed quarantine?**

WHD encourages employers to be accommodating and flexible with workers impacted by government-imposed quarantines. Employers may offer alternative work arrangements, such as teleworking, and additional paid time off to such employees.

## **How many hours per day or per week can an employee work?**

The [FLSA](#) does not limit the number of hours per day or per week that employees aged 16 years and older can be required to work.

## **Can an employee be required to perform work outside of the employee's job description?**

Yes. The FLSA does not limit the types of work employees age 18 and older may be required to perform. However, there are [restrictions on what work employees under the age of 18](#) can do. This is true whether or not the work asked of the employee is listed in the employee's job description.

As part of your pre-influenza, pandemic, or other public health emergency planning, you may want to consult your human resource specialists if you expect to assign employees work outside of their job description during a pandemic or other public health emergency. You may also wish to consult bargaining unit representatives if you have a union contract.

## **If individuals volunteer to a public agency, are they entitled to compensation?**

Individuals who volunteer their services to a public agency (such as a state, parish, city or county government) in an emergency capacity are not considered employees due compensation under the FLSA if they:

- Perform such services for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation. The volunteer performing such service may, however, be paid expenses, reasonable benefits or a nominal fee to perform such services; and,
- Offer their services freely and without coercion, direct or implied; and,
- Are not otherwise employed by the same public agency to perform the same services as those for which they propose to volunteer.

## **If individuals volunteer to a private, not-for-profit organization, are they entitled to compensation?**

Individuals who volunteer their services in an emergency relief capacity to private not-for-profit organizations for civic, religious or humanitarian objectives, without contemplation or receipt of compensation, are not considered employees due compensation under the FLSA. However, employees of such organizations may not volunteer to perform on an uncompensated basis the same services they are employed to perform.

Where employers are requested to furnish their services, including their employees, in emergency circumstances under Federal, state or local general police powers, the employer's employees will be considered employees of the government while rendering such services. No hours spent on the disaster relief services are counted as hours worked for the employer under the FLSA.

**May an employer encourage or require employees to telework (i.e., work from an alternative location such as home) as an infection control strategy?**

Yes. An employer may encourage or require employees to telework as an infection-control or prevention strategy, including based on timely information from public health authorities about pandemics, public health emergencies, or other similar conditions. Telework also may be a reasonable accommodation.

Of course, employers must not single out employees either to telework or to continue reporting to the workplace on a basis prohibited by any of the EEO laws. (See the U.S. Equal Employment Opportunity Commission's publication, [Work at Home/Telework as a Reasonable Accommodation](#), for additional information.)

**Do employers have to pay employees their same hourly rate or salary if they work at home?**

If telework is being provided as a reasonable accommodation for a qualified individual with a disability, or if required by a union or employment contract, then you must pay the same hourly rate or salary.

If this is not the case and you do not have a union contract or other employment contracts, under the FLSA employers generally have to pay employees only for the hours they actually work, whether at home or at the employer's office. However, the FLSA requires employers to pay non-exempt workers at least the minimum wage for all hours worked, and at least time and one half the regular rate of pay for hours worked in excess of 40 in a workweek. Salaried exempt employees generally must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions.

If the [Service Contract Act](#) (SCA) or state or local laws regulating the payment of wages also apply, nothing in the FLSA or its regulations or interpretations overrides or nullifies any higher standards provided by such other laws or authority. (See the U.S. Department of Labor, [Wage and Hour Division](#) for additional information on the SCA or call 1-866-487-9243.)

**In the event an organization bars employees from working from their current place of business and requires them to work at home, will employers have to pay those employees who are unable to work from home?**

Under the FLSA, employers generally only have to pay employees for the hours they actually work, whether at home or at the employer's office. However, employers must pay at least the minimum wage for all hours worked, and at least time and one half the regular rate of pay for hours worked in excess of 40 in a workweek. Salaried exempt employees must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions. (See the U.S. Department of Labor [Wage and Hour Division](#) for additional information or call 1-866-487-9243 if you have questions.)

When not all employees can work from home, we encourage you to consider additional options to promote social distancing, such as staggered work shifts.

**Are businesses and other employers required to cover any additional costs that employees may incur if they work from home (internet access, computer, additional phone line, increased use of electricity, etc.)?**

Employers may not require employees who are covered by the FLSA to pay or reimburse the employer for such items that are business expenses of the employer if doing so reduces the

employee's earnings below the required minimum wage or overtime compensation. (See the U.S. Department of Labor [Wage and Hour Division](#) for additional information or call 1-866-487-9243 if you have questions.)

Employers may not require employees to pay or reimburse the employer for such items if telework is being provided to a qualified individual with a disability as a reasonable accommodation under the [Americans with Disabilities Act](#). (See the U.S. Equal Employment Opportunity Commission's publication, [Work at Home/Telework as a Reasonable Accommodation](#), for additional information.)

### **Do OSHA's regulations and standards apply to the home office? Are there any other Federal laws employers need to worry about if employees work from home?**

The Department of Labor's Occupational Safety and Health Administration (OSHA) does not have any regulations regarding telework in home offices. The agency issued a directive in February 2000 stating that the agency will not conduct inspections of employees' home offices, will not hold employers liable for employees' home offices, and does not expect employers to inspect the home offices of their employees. If OSHA receives a complaint about a home office, the complainant will be advised of OSHA's policy. If an employee makes a specific request, OSHA may informally let employers know of complaints about home office conditions, but will not follow-up with the employer or employee.

Employers who are required to keep records of work-related injuries and illnesses will continue to be responsible for keeping such records for injuries and illnesses occurring in a home office.

The FLSA and its implementing regulations do not prevent employers from implementing telework or other flexible work arrangements allowing employees to work from home. Employers would still be required to maintain an accurate record of hours worked for all employees, including those participating in telework or other flexible work arrangements; and to pay no less than the minimum wage for all hours worked and to pay at least one and one-half times the employee's regular rate of pay for all hours worked over 40 in a workweek to non-exempt employees.

Employers are encouraged to work with their employees to establish hours of work for employees who telework and a mechanism for recording each teleworking employee's hours of work. Non-exempt employees must receive the required minimum wage and overtime pay free and clear. This means that when a covered employee is required to provide the tools and equipment (e.g., computer, internet connection, facsimile machine, etc.) needed for telework, the cost of providing the tools and equipment may not reduce the employee's pay below that required by the FLSA. (See the U.S. Department of Labor [Wage and Hour Division](#) for additional information or call 1-866-487-9243 if you have questions.)

Under the [Americans with Disabilities Act](#), telework could be a reasonable accommodation the employer would need to provide to a qualified individual with a disability, barring any undue hardship. However, an employer may instead offer alternative accommodations as long as they would be effective. (See the U.S. Equal Employment Opportunity Commission's publication, [Work at Home/Telework as a Reasonable Accommodation](#), for additional information.)

**In the event an employer brings on temporary employees from a staffing agency to supplement its workforce due to staffing shortages, is the employer liable if the temporary employees are not paid in accordance with the wage requirements of the FLSA?**

Under the FLSA, an employee may be employed by one or more individuals or entities. If one or more of these employers are deemed joint employers, they may both be responsible—and jointly and severally liable—for the employee’s required minimum wage and overtime pay. The U.S. Department of Labor recently updated and revised its regulations providing guidance regarding joint employer status under the FLSA. The final rule provides updated guidance for determining joint employer status when an employee performs work for his or her employer that simultaneously benefits another individual or entity. The effective date of the final rule is March 16, 2020. For more information please visit: <https://www.dol.gov/agencies/whd/flsa/2020-joint-employment>.

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## **Contact Us**

For additional information, visit our Wage and Hour Division  
Website: <https://www.dol.gov/agencies/whd> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

For further information about Coronavirus, please visit the HHS’s [Centers for Disease Control and Prevention](#).

# COVID-19 and the Family and Medical Leave Act

## Questions and Answers

**If you or your employees are out with the flu** or are caring for ill family members, check with the Department of Labor (DOL) for information on whether such leave is covered under the [Family and Medical Leave Act \(FMLA\)](#). Under the FMLA, [covered](#) employers must provide employees job-protected, unpaid leave for specified [family and medical reasons](#), which may include the [flu](#) where complications arise. Employees on FMLA leave are entitled to the [continuation of group health insurance](#) coverage under the same terms as existed before they took FMLA leave.

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### **Which employees are eligible to take FMLA leave?**

Employees are eligible to take FMLA leave if they work for a covered employer and:

- have worked for their employer for at least 12 months;
- have at least 1,250 hours of service over the previous 12 months; and
- work at a location where at least 50 employees are employed by the employer within 75 miles.

Special hours of service requirements apply to airline flight crew employees and to breaks in service to fulfill National Guard or Reserve military service obligations pursuant to the Uniformed Services Employment and Reemployment Rights Act (USERRA). (See the U.S. Department of Labor [Wage and Hour Division](#) or call 1-866-487-9243 for additional information on FMLA.)

### **Must an employer grant leave to an employee who is sick or who is caring for a family member that is sick?**

An employee who is sick or whose family members are sick may be entitled to leave under the FMLA under certain circumstances. The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave in a designated 12-month leave year for specified family and medical reasons. This may include the flu where complications arise that create a “serious health condition” as defined by the FMLA. Employees on FMLA leave are entitled to the continuation of group health insurance coverage under the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period.

Workers who are ill with pandemic influenza or have a family member with influenza are urged to stay home to minimize the spread of the pandemic. Employers are encouraged to support these and other community mitigation strategies and should consider flexible leave policies for their employees.

### **Can an employee stay home under FMLA leave to avoid getting pandemic influenza?**

The FMLA protects eligible employees who are incapacitated by a serious health condition, as may be the case with the flu where complications arise, or who are needed to care for covered family members who are incapacitated by a serious health condition. Leave taken by an employee for the purpose of avoiding exposure to the flu would not be protected under the FMLA. Employers should encourage employees who are ill with pandemic influenza or are exposed to ill family members to stay home and should consider flexible leave policies for their employees in these circumstances.

## **What legal responsibility do employers have to allow parents or care givers time off from work to care for the sick or children who have been dismissed from school?**

Covered employers must abide by the FMLA as well as any applicable [state FMLA laws](#). An employee who is sick, or whose family members are sick, may be entitled to leave under the FMLA. The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave in a designated 12-month leave year for specified family and medical reasons which may include the flu where complications arise that create a “serious health condition” as defined by the FMLA.

There is currently no federal law covering non-government employees who take off from work to care for healthy children, and employers are not required by federal law to provide leave to employees caring for dependents who have been dismissed from school or child care. However, given the potential for significant illness under some pandemic influenza scenarios, employers should review their leave policies to consider providing increased flexibility to their employees and their families. Remember that federal law mandates that any flexible leave policies must be administered in a manner that does not discriminate against employees because of race, color, sex, national origin, religion, age (40 and over), disability, or veteran status.

## **Is an employer required by law to provide paid sick leave to employees who are out of work because they have pandemic influenza, have been exposed to a family member with influenza, or are caring for a family member with influenza?**

Federal law generally does not require employers to provide **paid leave** to employees who are absent from work because they are sick with pandemic flu, have been exposed to someone with the flu or are caring for someone with the flu, although pursuant to [Executive Order 13706](#), some federal contractors may be required to provide such leave to employees under certain circumstances, such as if the employee or a family member is sick with the flu or seeking care related to the flu. Certain state or local laws may have different requirements, which should be independently considered by employers when determining their obligation to provide paid sick leave.

If the leave qualifies as FMLA-protected leave, the statute allows the employee to elect or the employer to require the substitution of paid sick and paid vacation/personal leave in some circumstances. Employers should encourage employees that are ill with pandemic influenza to stay home and should consider flexible leave policies for their employees.

## **May employers send employees home if they show symptoms of pandemic influenza? Can the employees be required to take sick leave? Do they have to be paid? May employers prevent employees from coming to work?**

It is important to prepare a plan of action specific to your workplace, given that a pandemic influenza outbreak could affect many employees. This plan or policy could permit you to send employees home, but the plan and the employment decisions must comply with the laws prohibiting discrimination in the workplace on the basis of race, sex, age (40 and over), color, religion, national origin, disability, or veteran status. It would also be prudent to notify employees (and if applicable, their bargaining unit representatives) about decisions made under this plan or policy at the earliest feasible time.

Your company policies on sick leave, and any applicable employment contracts or collective bargaining agreements would determine whether you should provide paid leave to employees who are not at work. If the leave qualifies as FMLA-protected leave, the statute allows the employee to elect or the employer to require the substitution of paid sick and paid vacation/personal leave in some circumstances. (See the U.S. Department of Labor [Wage and Hour Division](#) for additional information or call 1-866-487-9243 if you have any questions.)

Remember when making these decisions to exclude employees from the workplace, you cannot discriminate on the basis of race, sex, age (40 and over), color, religion, national origin, disability, union membership or veteran status. However, you may exclude an employee with a disability from the workplace if you:

- obtain objective evidence that the employee poses a direct threat (i.e. significant risk of substantial harm); and
- determine that there is no available reasonable accommodation (that would not pose an undue hardship) to eliminate the direct threat.

(See the U.S. Equal Employment Opportunity Commission's [Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act](#) for additional information.)

### **May an employer require an employee who is out sick with pandemic influenza to provide a doctor's note, submit to a medical exam, or remain symptom-free for a specified amount of time before returning to work?**

**Yes.** However, employers should consider that during a pandemic, healthcare resources may be overwhelmed and it may be difficult for employees to get appointments with doctors or other health care providers to verify they are well or no longer contagious.

During a pandemic health crisis, under the [Americans with Disabilities Act](#)<sup>1</sup> (ADA), an employer would be allowed to require a doctor's note, a medical examination, or a time period during which the employee has been symptom free, before it allows the employee to return to work. Specifically, an employer may require the above actions of an employee where it has a reasonable belief – based on objective evidence – that the employee's present medical condition would

- impair his ability to perform **essential job functions** (i.e., fundamental job duties) with or without reasonable accommodation, or,
- pose a **direct threat** (i.e., significant risk of substantial harm that cannot be reduced or eliminated by reasonable accommodation) to safety in the workplace.

In situations in which an employee's leave is covered by the FMLA, the employer may have a uniformly-applied policy or practice that requires all similarly-situated employees to obtain and present certification from the employee's health care provider that the employee is able to resume work. Employers are required to notify employees in advance if the employer will require a [fitness-for-duty certification](#) to return to work. If state or local law or the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied. Employers should be aware that fitness-for-duty certifications may be difficult to obtain during a pandemic.

### **May employers change their paid sick leave policy if a number of employees are out and they cannot afford to pay them all?**

Federal equal employment opportunity laws do not prohibit employers from changing their paid sick leave policy if it is done in a manner that does not discriminate between employees because of race, sex, age (40 and over), color, religion, national origin, disability, or veteran status. Be sure also to consult state and local laws.

In addition, you should consider that if your workforce is represented by a labor union and the collective bargaining agreement covers sick leave policies, you may be limited in either the manner in which you change the policy or the manner of the changes themselves because the collective bargaining agreement would be controlling. In a workplace without a collective bargaining agreement, employees may have a contractual right to any accrued sick leave, but not future leave.

Your sick leave policy also has to follow the requirements of the FMLA (if your employees are covered by the Act), and it needs to be consistent with federal workplace anti-discrimination laws, such as the [Americans with Disabilities Act](#) (ADA). (See the U.S. Department of Labor, [Wage and Hour Division](#) or call 1-866-487-9243 for additional information on FMLA. See the [U.S. Equal Employment Opportunity Commission](#) or call 1-800-669-4000 if you have questions on ADA.)

**If an employer temporarily closes his or her place of business because of an influenza pandemic and chooses to lay off some but not all employees, are there any federal laws that would govern this decision?**

The federal laws prohibiting discrimination in the workplace on the basis of race, sex, age (40 and over), color, religion, national origin, or disability may apply. (See the [U.S. Equal Employment Opportunity Commission](#) (EEOC) or call 1-800-669-4000 if you have questions.) Other specific Federal laws that prohibit discrimination on these or additional bases may also govern if an employer is a Federal contractor or a recipient of Federal financial assistance.

Additionally, the Worker Adjustment and Retraining Notification (WARN) Act helps ensure advance notice in cases of qualified plant closings and mass layoffs. For more information about the WARN Act see <https://www.dol.gov/agencies/eta/layoffs/warn>.

You may also not discriminate against an employee because the employee has requested or used qualifying FMLA leave. (See the U.S. Department of Labor, [Wage and Hour Division](#) for additional information or call 1-866-487-9243 if you have questions.)

In addition, you may not discriminate against an employee because he or she is a past or present member of the United States uniformed service. (See the U.S. Department of Labor, [Veterans' Employment and Training Service](#) for additional information or call 1-866-889-5627 if you have questions.)

**Some employees may not be able to come to work because they have to take care of sick family members. May an employer lay them off?**

It depends. If an employee is **covered and eligible** under the FMLA and is needed to care for a spouse, daughter, son, or parent who has a serious health condition, then the employee is entitled to up to 12 weeks of **job-protected**, unpaid leave during any 12-month period. Some states may have similar [family leave laws](#). In those situations, covered employers must comply with the federal or state provision that provides the greater benefit to their employees. (See the U.S. Department of Labor, [Wage and Hour Division](#) for additional information or call 1-866-487-9243 if you have questions.)

In lieu of laying off employees in this situation, we would encourage you to consider other options such as telecommuting and to prepare a plan of action specific to your workplace.



## What types of policy options do employers have for preventing abuse of leave?

Both the FMLA and the [Americans with Disabilities Act](#) affect the provision of leave.

Under the FMLA, employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave **when the need is foreseeable** and such notice is practicable. In addition, employers may require employees to provide:

- medical certification supporting the need for leave due to a serious health condition affecting the employee or a spouse, son, daughter or parent, including periodic re-certification;
- second or third medical opinions (at the employer's expense);
- periodic reports during FMLA leave regarding the employee's status and intent to return to work; and
- consistent with a uniformly-applied policy or practice for similarly-situated employees, a fitness for duty certification. (Employers should be aware that fitness-for-duty certifications may be difficult to obtain during a pandemic.) (See also: "May an employer require an employee who is out sick with pandemic influenza to provide a doctor's note, submit to a medical exam, or remain symptom-free for a specified amount of time before returning to work?")

The FMLA also allows the employee to elect or the employer to require the substitution of paid sick and paid vacation/personal leave in some circumstances. (See the U.S. Department of Labor [Wage and Hour Division](#) for additional information on the FMLA or call 1-866-487-9243 if you have questions.)

Under the [Americans with Disabilities Act](#), qualified individuals with disabilities may be entitled to unscheduled leave, unpaid leave, or modifications to the employer sick leave policies as "reasonable accommodations." These are modifications or adjustments to jobs, work environments, or workplace policies that enable qualified employees with disabilities to perform the essential functions (i.e., fundamental duties) of their jobs and have equal opportunities to receive the benefits available to employees without disabilities. (See the U.S. Equal Employment Opportunity Commission's [Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act](#) for additional information.)

For further information about Coronavirus, please visit the HHS's [Centers for Disease Control and Prevention](#).

# **SECTION THREE**

## **Families First Coronavirus Response Act (FFCRA)**

### **General Q&A**

**As of March 25, 2020**

## **When Business Threats Are Contagious: 10 Answers for Employers Navigating the Coronavirus**

Employers are facing an unprecedented challenge navigating COVID-19. As the virus spreads, it is generating fear and uncertainty. Employers need clear answers they can trust. They want to know how they can protect their employees, what their obligations are under the law, and what steps they may need to take if the situation gets worse. We've put together this FAQ in the hope that it helps you manage this challenge and adapt to the circumstances ahead.

### **1. Can employees refuse to travel to areas considered safe?**

You can require employees to travel as long as you meet your general duty under OSHA to provide a workplace (including any travel location) that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees.

To ensure that you are not subjecting an employee to excessive risk, check the CDC's [Traveler's Health Notices](#) for the latest guidance and recommendations for each country where the employee is traveling.

Perhaps more important than whether you can force an employee to travel is whether you should. Requiring a fearful employee to travel will erode trust and confidence and likely cause them significant anxiety. Consider video calls or videoconferencing as an (inexpensive!) alternative to traveling for the next few weeks or months.

Also keep in mind that employees who are immunocompromised or have other relevant disabilities may be entitled to an accommodation (such as not traveling, given current conditions) under the ADA.

### **2. Can we send employees home if they are symptomatic?**

Yes. The Centers for Disease Control and Prevention (CDC) has [advised employers](#) that employees who appear to have symptoms of COVID-19 (e.g., cough, shortness of breath) should be separated from other employees and sent home immediately. If the employee feels well enough to work, consider whether they can effectively telecommute.

Note: Non-exempt employees may be entitled to a few extra hours of pay if you're in a state with reporting time pay, but this cost will be well worth it to maintain the safety of the workplace.

### **3. What if my employee discloses that their family member or roommate has COVID-19?**

Our recommendation is to follow guidance from the Centers for Disease Control and Prevention (CDC). Employers should ask employees who live with someone confirmed to have COVID-19 to notify a designated HR representative or their supervisor as soon as possible. The employer and employee should then refer to CDC guidance to assess risk and determine next steps—see Tables 1 and 2 in the CDC's [Interim US Guidance](#) for Risk Assessment and Public Health Management.

### **4. Do any leaves apply?**

Whether FMLA or a state family and medical leave or insurance program will apply to a particular case of COVID-19 will be fact-specific. Even if FMLA or state leaves do not apply, though, we would recommend that employers treat leaves related to this illness as job-protected, both for legal reasons and because it's the right thing to do. If you're in a state with a sick leave law, that will apply if the employee is sick, a family member is sick, or (in many states) when an employee is told to stay home by a public health authority.

## **5. If an employee is out of the office due to sickness, can we ask them about their symptoms?**

Yes, but there's a right way to do it and a wrong way to do it. In most circumstances, employers shouldn't ask about an employee's symptoms, as that could be construed as a disability-related inquiry. Under the circumstances, however—and in line with an employer's responsibility to provide a safe workplace—we recommend asking specifically about the symptoms of COVID-19 and making it clear that this is the extent of the information you're looking for.

Here's a suggested communication: "Thank you for staying home while sick. In the interest of keeping all employees as safe as possible, we'd like to know if you are having any of the symptoms of COVID-19. Are you experiencing a fever, cough, and/or shortness of breath?"

Remember that medical information must be kept confidential as required by the ADA. If the employee does reveal that they have symptoms of COVID-19, or has a confirmed case, you should see the CDC's [Interim Guidance](#) to determine next steps. Tables 1 and 2 will help you assess risk and determine what steps, if any, should be taken.

## **6. What if I have a fearful employee who refuses to come to work?**

Generally, employees do not have a right to refuse to work based only on a generalized fear of becoming ill. If their fear is not based on objective evidence of possible exposure, you can enforce your attendance policies.

You should be prepared for employees who express anxiety about coming to work and evaluate any request on a case-by-case basis. Consider alternative arrangements such as telecommuting if possible. Employees who are immunocompromised or have other relevant disabilities may be entitled to a reasonable accommodation, such as working from home or taking a leave if working from home is not possible.

If the nature of the employee's position does not allow telecommuting, and there is no legitimate threat, reiterate the steps they can take to keep themselves safe from contracting the virus and explain the proactive steps you are taking to keep infection risk low in the workplace.

## **7. Can we require or allow certain groups of employees, but not others, to work from home?**

Yes. Employers may offer different benefits or terms of employment to different groups of employees as long as the distinction is based on non-discriminatory criteria. For instance, a telecommuting option or requirement can be based on the type of work performed, employee classification (exempt v. non-exempt), or location of the office or the employee. Employers should be able to support the business justification for allowing or requiring certain groups to telecommute.

## **8. How do I make a telecommuting policy?**

Although some employers will be comfortable sending everyone home with their laptop and saying, go forth and be productive, most will want to be a little more specific. A good telecommuting policy will generally address productivity standards, hours of work, how and when employees should be in contact with their manager or subordinates, and office expenses.

For instance, your policy might require that employees are available by phone and messaging app during their regular in-office hours, that they meet all deadlines and maintain client contacts per usual, and that they check in with their manager at the close of each workday to report what they have

accomplished. Be sure to let employees know whom to contact if they run into technical difficulties at home.

You'll also want to specify how expenses related to working from home will be dealt with. If you don't expect there to be any additional expenses involved, communicate this. You don't want employees thinking this is their chance to purchase a standing desk and fancy ergonomic chair on your dime. That said, you should consider whether employees will incur reasonable and necessary expenses while working from home. Some states mandate reimbursement for these kinds of expenses, but it's a good practice to cover such costs even if it's not required by law.

### **9. If we choose to close temporarily, do we need to pay employees?**

It depends on the employee's classification.

Non-exempt employees only need to be paid only for actual hours worked. For these employees, you may:

1. Pay the employee for the time, even though they did not work;
2. Require they take the time off unpaid;
3. Require they use any available vacation time or PTO; or
4. Allow employees to choose between taking an unpaid day or using vacation or PTO.

All four options are compliant with state and federal law. We generally recommend option 4—allowing but not requiring employees to use vacation time or PTO. If your office is required to close by health authorities and your state has a sick leave law, employees may be able to use accrued paid sick leave during the closure.

Exempt employees must be paid their regular salary unless the office is closed for an entire workweek and they do *no work at all from home*. You can, however, require them to use accrued vacation or PTO during a closure if you have a policy that indicates you will do so, or if this has been your past practice. When it comes to accrued vacation or PTO, it is safest to give employees advance notice if there are situations where you will use their accrued hours whether they like it or not.

### **10. If we close temporarily, will employees be able to file for unemployment insurance?**

Depending on the length of the closure, employees may be able to file for unemployment insurance. Waiting periods range from 1-3 weeks and are determined by state law. Be prepared to respond to requests for verification or information from the state UI department if you close for longer than the mandatory waiting period.

## **SECTION FOUR**

# **Coronavirus Aid, Relief, Economic Security Act (CARES Act)**

**As of April 7, 2020**

# The Coronavirus Aid, Response, and Economic Security Act “CARES Act”

## Health Care

- Clarifies that all testing for coronavirus (COVID-19) is to be covered by private insurance plans (fully-insured and self-insured) without cost sharing. Coverage extends to any services or items provided during a medical visit—including an in-person or telehealth visit to a doctor’s office, an urgent care center, or an emergency room—that results in coronavirus testing or screening. This coverage requirement began on March 18 (when Families First Coronavirus Response Act was enacted) and remains in effect only while there is a declared public health emergency (as defined under federal law).
- For private health insurance plans, the bill broadens the testing that would be covered without cost-sharing beyond FDA-approved testing to include 1) tests provided by clinical labs on an emergency basis (including public health labs); and 2) state-developed labs.
- Changes the use of health savings accounts (HSAs) paired with high-deductible health plans (HDHPs). Allows a high-deductible health plan (HDHP) with a HSA to cover telehealth services prior to a patient reaching the deductible. This means that telehealth and other remote care services could be covered pre-deductible without violating federal rules for HDHPs paired with an HSA. This provision is temporary and will sunset December 31, 2021 unless Congress takes future action to extend or make permanent.
- Inclusion of certain over-the-counter medical products as qualified expenses. Allows patients to use funds in HSAs, Flexible Spending Accounts, Archer medical savings accounts and health reimbursement arrangements for the purchase of over-the-counter medical products, including those needed in quarantine and social distancing, without a prescription from a physician. This change would apply for amounts paid or expenses incurred after December 31, 2019.
- Allows HSAs (and the similar arrangements noted above) to be used to pay for certain menstrual care products, such as tampons and pads. These products would be treated as qualified medical expenses for purposes of these arrangements. This change would apply for amounts paid or expenses incurred after December 31, 2019.

## Benefits

- Allows an employee who was laid off by an employer March 1, 2020, or later to have access to paid family and medical leave in certain instances if they are rehired by the employer. The employee would have had to work for the employer at least 30 days prior to being laid off.
- Allows employers to receive an advance tax credit from the Department of Treasury instead of having to be reimbursed on the back end. Creates regulatory authority to implement tax credit advancements.
- Amends Section 518 of ERISA to provide the Department of Labor the ability to postpone certain ERISA filing deadlines for a period of up to one year in the case of a public health emergency.
- Provides single employer pension plan companies with more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until January 1, 2021. At that time, contributions due earlier would be due with interest. The bill also provides that a plan’s status for benefit restrictions as of December 31, 2019, will apply throughout 2020.

- Ensures that federal contractors who cannot perform work at their duty-station or telework because of the nature of their jobs due to COVID-19, continue to get paid.

## **Retirement**

- Waives the 10% tax on early withdrawals up to \$100,000 from a retirement plan or IRA (made on or after January 1, 2020) for an individual who is diagnosed with COVID-19; whose spouse or dependent is diagnosed with COVID-19; who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19; or other factors as determined by the Treasury Secretary.
- Permits individuals to pay tax on the income from the distribution over a three-year period and allows individuals to repay that amount tax-free back into the plan over the next three years. Those repayments would not be subject to the retirement plan contribution limits.
- Doubles the current retirement plan loan limits to the lesser of \$100,000 or 100% of the participant's vested account balance in the plan. Individuals with an outstanding loan from their plan with a repayment due from the date of enactment of the CARES Act through Dec. 31, 2020, can delay their loan repayment(s) for up to one year.
- Retirement plans can make amendments and adopt these rules immediately, even if the plan does not currently allow for hardship distributions or loans, provided the plan is amended on or before the last day of the first plan year beginning on or after Jan. 1, 2020, or later if prescribed by the Treasury Secretary.
- Waives the required minimum distribution rules for accountholders who are age 70-1/2 or older that are subject to mandatory minimum distributions for certain defined contribution plans and IRAs for calendar year 2020. This provision provides relief to individuals who would otherwise be required to withdraw funds from such retirement accounts during the economic slowdown due to COVID-19.

## **Business Provisions**

- Allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. All employers are responsible for paying a 6.2% Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The Social Security Trust Funds will be held harmless under this provision.
- Provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50% when compared to the same quarter in the prior year.
  - o For employers with more than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID- 19-related circumstances.
  - o For employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.



o The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee and is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

o Loan to support, among other things, wages, cash tip equivalents, the cost of health benefits, the cost of retirement benefits, the cost of leave (e.g., vacation, family, and sick leave), or the payment of State or local taxes assessed on employee compensation. The loan can also be used to pay mortgage interest, rent, utility bills, and premiums for COBRA.

o Defines eligibility for loans as a small business, 501(c)(3) nonprofit, a 501(c)(19) veteran's organization, or Tribal business concern described in section 31(b)(2)(C) of the Small Business Act with not more than 500 employees, or the applicable size standard for the industry as provided by SBA, if higher. Self-employed individuals are also eligible to receive a loan.

o Small businesses may take out loans through December 31, 2020 and cover employees making up to \$100,000 per year; loans taken for this purpose may be forgiven if the business maintains an average monthly number of employees during the covered period (between February 15 and June 30) that is no less than the number it had before the crisis began, among other requirements. Firms that have laid off employees may qualify for forgiveness if employees are rehired by April 1, 2020.

o The cost of participation in the program would be reduced for both borrowers and lenders by providing fee waivers, an automatic deferment of payments for one year, and no prepayment penalties.

- Employers (of any size) may apply for relief loans due to COVID-19. One requirement (among others) for loan recipients is to maintain employment levels as of March 24, 2020 through September 30, 2020, to the extent practicable, and in any case shall not reduce their employment levels by more than 10% from the levels on such date the loan is acquired.
- Employers with 500 or fewer employees are eligible to receive a loan to cover costs incurred by the employer between February 15 and June 30. For purposes of counting the number of employees that are employed, the term "employee" includes full-time employees, part-time employees, and individuals employed on "other basis," like seasonal or temporary.
- Midsize to large employers (500 to 10,000 employees) including nonprofit organizations may qualify for loans related to losses incurred as a result of COVID-19. Loan borrowers will not be required to pay principal or interest towards the loan for the first six months or longer at the discretion of the Treasury Secretary. Loan recipients must retain at least 90% of the workforce, at full compensation and benefits, until September 30, 2020, among other requirements.

## **Education Assistance**

Allows employers to provide a student loan repayment benefit to employees on a tax-free basis. Under the provision, an employer may contribute up to \$5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The \$5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

# **SECTION FIVE**

**CARES Act**

## **PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)**

**As of April 7, 2020**

## Overview of Unemployment Benefits Changes Under the CARES Act

The Coronavirus Aid, Relief, and Economic Security (CARES) Act became law on March 27, 2020, and is a \$2.2 trillion economic stimulus package designed to support individuals and businesses affected by the COVID-19 pandemic. This Act is important because it provides federal dollars at this time of crisis to state unemployment insurance benefit (UI) programs and to individuals who would not normally have this assistance. The Act is separate from the Families First Coronavirus Response Act (FFCRA), which was enacted mid-March.

The CARES Act makes significant changes to UI benefits, which are administered by the states. The CARES Act allows states to opt in to an agreement with the federal government to receive enhanced UI benefits and Pandemic Unemployment Assistance funded by the federal government.

Since individual determinations about worker eligibility for UI benefits are made by the states, we recommend not speculating about or attempting to calculate how much your workers will receive.

The key provisions of the CARES Act are as follows:

### **Additional Cash Benefits for Claimants and Longer Benefit Period**

The CARES Act added an additional \$600 to the weekly UI benefits amount that an individual would normally receive, for up to four months, through July 31, 2020. (Some may earn more than they would working.) The \$600 is in addition to the state benefit amount and applies to all unemployed workers.

The Act also increases the length of time someone can be on unemployment benefits to a maximum of 39 weeks. (For many states, this will be an increase of 13 weeks of benefits.)

While these unemployment benefits are generous, employers should still consider their options and incentives under the CARES Act to keep workers employed before making decisions about reduced hours, furloughs, or layoffs.

### **More Workers Will be Eligible for Pandemic Unemployment Assistance (PUA)**

The PUA program provides supplemental unemployment insurance benefits to individuals who would not normally qualify for traditional UI benefits, such as:

- Self-employed workers;
- Independent contractors;
- Gig workers;
- Low wage workers who can no longer work because of the pandemic;
- Those without sufficient work history;
- Individuals who have exhausted their regular unemployment benefits and extended federal benefits. This means that traditional employees may apply for PUA after all of their other unemployment benefit options have expired.

The PUA program runs from January 27, 2020, to December 31, 2020. This means unemployment assistance is available to covered individuals for weeks of unemployment, partial unemployment, or inability to work caused by COVID-19 beginning on or after January 27, 2020, and ending on or before December 31, 2020.

## Qualifications

A “covered individual” for PUA includes anyone who is not eligible for regular unemployment compensation or expanded benefits and who provides “self-certification” that they are able and available to work but unemployed or partially unemployed or unable to work because of any of the following:

1. They were diagnosed with COVID-19 or are experiencing symptoms of COVID-19 and are seeking a medical diagnosis;
2. A household member was diagnosed with COVID-19;
3. They are providing care for a family member or household member diagnosed with COVID-19;
4. They are the primary caregiver for a child, or another person in their household, who is unable to attend school or another facility that is closed as a direct result of COVID-19 and that school or such facility care is required for the individual to be able to work;
5. They are unable to reach their workplace because of a quarantine imposed as a direct result of COVID-19;
6. They are unable to reach their workplace because a health care provider has advised them to self-quarantine because of COVID-19 related concerns;
7. They were scheduled to commence employment and do not have a job or is unable to reach the job as a direct result of COVID-19;
8. They have become the breadwinner or major support for a household because the head of household died as a direct result of COVID-19;
9. They had to quit their job as a direct result of COVID-19;
10. Their workplace is closed as a direct result of COVID-19; or
11. They meet any additional criteria established by the Secretary of the Department of Labor for unemployment assistance.

Individuals who are **able to telework with pay** or who are **receiving paid sick leave or other paid leave benefits**, regardless of whether they meet any of the qualifications above, will not qualify for these benefits.

## One-Week Waiting Period for UI Benefits Removed

The CARES Act provides federal funding for states to remove the waiting week to receive unemployment compensation. However, many states voluntarily removed their one-week waiting period prior to the Act’s passage. It is likely that remaining states will also remove their waiting period.

Employees who experience reduced hours, furloughs, or layoffs should be encouraged to file for UI benefits as soon as possible by following their state’s website guidance. We are directing clients to contact their state employment department for questions about these expanded unemployment insurance benefits because the law is in flux and these departments are the most qualified to answer questions about their (and the federal) UI programs.

## FAQs

**When do expanded UI benefits and Pandemic Unemployment Assistance take effect?** It depends on the relevant state unemployment agency. Expanded UI benefits for unemployed workers will depend on when your state opts in to the federal program. States are now awaiting implementation guidance from the DOL to implement the various provisions and building the infrastructure to take applications under the new rules.

The PUA program runs from January 27, 2020, to December 31, 2020. This means unemployment assistance is available to covered individuals for weeks of unemployment, partial unemployment, or

inability to work caused by COVID-19 beginning on or after January 27, 2020, and ending on or before December 31, 2020. Check with your state unemployment agency for more details.

### **How do I know my state's current Maximum Weekly Benefit Amount (WBA) and calculation method?**

State maximum WBAs range from \$235 to over \$1000. Please refer to the chart [here](#) for information about each state's regular unemployment minimum and maximum WBA and calculation information. Please direct questions about WBA calculation to your state's unemployment department. *We do not recommend providing employees with estimated benefits and recommend directing them to the state's employment department website for information about their benefits.*

### **What is this "work sharing" I keep hearing about?**

Work share (or "short-time compensation") is where the company signs into an agreement with the state employment department to keep people working. There are strings attached, but ultimately employees continue working and can often get higher weekly UI benefits than they would with a partial claim. The federal government will be funding existing work share programs and adding incentives for states to provide them if they don't already. Start [here](#) to see if your state currently has a work share program.

### **How will Pandemic Unemployment Assistance work? Am I (or one of my independent contractors or other workers) eligible?**

There are a lot of unanswered questions about how PUA will work. We recommend referring those who may be newly eligible for PUA benefits to the state's unemployment department for information. We anticipate that states will issue additional information and application guidelines for independent contractors and others not typically eligible for unemployment benefits.

### **Can workers get a higher benefit than they previously made in wages? Won't that be a disincentive to look for work?**

Yes, they can; however, this primarily affects lower wage earners. The \$600 payment alone reflects a 40-hour workweek at \$15/hour. The federal pandemic unemployment compensation (\$600) combined with the underlying state unemployment benefit, would replace 100 percent of wages for the average US worker. Normally UI benefits do not replace all lost wages (and nationally replace about 40 percent of wages). UI benefits are normally intended only to assist workers while they are actively seeking new employment. However, nothing about this virus or situation is normal; COVID-19 is a public health emergency. Providing an average wage of \$15 per hour was not meant to disincentivize work but rather protect all workers. This especially applies to workers who would normally earn very low unemployment benefits—by providing an unemployment wage replacement at \$15 per hour, they are not forced to work in violation of public health orders (at a higher risk of infection) and thus are not disparately affected by this pandemic.

### **What about people whose hours have been reduced? Can they get unemployment insurance payments?**

Yes, individuals can receive benefits for partial unemployment. In a few states, an individual is considered totally unemployed in a week even when certain small amounts of wages are earned. In most states, an individual is considered to be partially unemployed if they are working less than full-time and their earnings are less than the weekly benefit amount that they would be eligible for if they were unemployed. Some states may disregard a portion of a person's earnings in this calculation as well, meaning some of their earnings would not count when calculating their weekly benefit amount they are eligible for (see Table 3-8 [here](#) for specific state information).

**Will the \$600 Pandemic Unemployment Assistance (PUA) be prorated for those who are partially unemployed (working reduced hours)?**

No. Guidance recently released by the Department of Labor clarified that if an individual is eligible to receive at least one dollar (\$1) of underlying benefits for the claimed week, the claimant will receive the full \$600 FPUC. Please direct questions about partial benefits calculation formulas to your state unemployment department.

**Can an employee just quit work and get these new expanded benefits?**

Generally, individuals who voluntarily quit are ineligible for UI benefits. It's possible that an employee with a reasonable good faith belief that their workplace is unsafe (e.g., coworkers have tested positive for COVID-19 and their employer is not abiding by CDC guidelines or the employee is high risk for infection or immunocompromised) could assert that they quit because of COVID-19 related issues and may qualify for PUA. Ultimately the state, and not the employer, determines employee eligibility. However, employers may contest an employee's unwarranted unemployment benefit claim and the employee will be required to demonstrate their eligibility to receive unemployment compensation.

**Help! I'm a non-profit reimbursing employer! What do I do?**

The CARES Act provides for some potential flexibility for reimbursement payments. Please contact your state unemployment office for more information.

**News Release April 4, 2020;** The U.S. Department of Labor today announced the publication of Unemployment [Insurance Guidance Letter 15-20](#) (UIPL) providing guidance to states for Federal Pandemic Unemployment Compensation (FPUC). Under FPUC, states will administer an additional \$600 weekly payment to certain eligible individuals who are receiving other benefits. This provision is contained in Section 2104 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) enacted on March 27, 2020.

**News Release April 5, 2020;** The U.S. Department of Labor today announced the publication of Unemployment Insurance Program Letter (UIPL) [16-20](#) providing guidance to states for implementation of the Pandemic Unemployment Assistance (PUA) program

PUA provides up to 39 weeks of benefits to qualifying individuals who are otherwise able to work and available for work within the meaning of applicable state law, except that they are unemployed, partially unemployed, or unable or unavailable to work due to COVID-19 related reasons, as defined in the CARES Act. Benefit payments under PUA are retroactive, for weeks of unemployment, partial employment, or inability to work due to COVID-19 reasons starting on or after January 27, 2020. The CARES Act specifies that PUA benefits cannot be paid for weeks of unemployment ending after December 31, 2020.

The UIPL also includes guidance to states about protecting unemployment insurance program integrity. The department is actively working with states to provide benefits only to those who qualify for such benefits.

For more information on UIPLs or previous guidance, please visit: <https://wdr.doleta.gov/directives/>.

For department resources on COVID-19, please visit: <https://www.dol.gov/coronavirus>.

For more information about COVID-19, please visit: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

# **SECTION FOUR**

## **State of Michigan Medical Paid Leave & Unemployment**

**As of March 25, 2020**

# MICHIGAN PAID MEDICAL LEAVE ACT

## Applicability

The law applies to most employers with 50 or more employees. The law does not apply to exempt executive, professional, or administrative employees, employees hired for 25 or fewer weeks in a year for a job that is scheduled to take 25 weeks or fewer, or those who worked on average fewer than 25 hours per week in the preceding calendar year. Several other types of workers are also exempt; the full list can be found on the [mandatory poster](#) under “Coverage.” For more information on who qualifies as an exempt executive, professional, or administrative employee, use those terms in the search bar to find multiple resources on each.

## Accrual

Employees must generally accrue one hour of paid sick leave for every 35 hours worked, but do not need to be granted more than one hour per week of work. Employees may accrue and use up to 40 hours per benefit year (which may be any consecutive 12-month period). Employees begin accruing leave immediately upon employment or on the effective date of the law in March 2019, whichever comes later.

Employees must be allowed to carry over up to 40 hours of unused sick leave per year. Having more than 40 hours in their bank does not change the fact that use may be limited to 40 hours per year.

Employers may choose to instead provide employees with 40 hours of paid sick leave in a lump sum at the beginning of each benefit year. If using this method, unused time will be forfeit at the end of each benefit year rather than carrying over.

## Usage

Employees are eligible to use leave on their 90th day of employment. Yearly usage may be capped at 40 hours. Employers must allow employees to use sick leave in increments as small as one hour, unless they have a policy designating a longer increment..

Employees may use sick time for the following:

- An employee’s mental or physical illness, injury or health condition, need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive health care
- For the care of a family member with a mental or physical illness, injury or health condition, need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive health care
- To seek medical services if an employee is a victim of domestic violence or sexual assault
- In the case of a public health emergency that causes the employee’s place of business or the employee’s child’s school or place of care to be closed or when a health authority or health care provider determines that the employee or their family member should stay home in order to prevent the spread of a communicable disease

Family members include children, whether biological, adopted, foster, step, or a child to whom the employee stands in loco parentis; parents, whether biological, adoptive, foster, step, legal guardians of the employee or the employee’s spouse, or a person who stood in loco parentis when the employee was a minor child; legal wards; spouse; grandparents and grandchildren.



When sick leave is used, it must be paid at the employee's regular rate of pay. Employees who earn commission, or work on a piece-rate basis, should be paid their standard base rate or minimum wage, whichever is greater

Unused sick leave is forfeit at termination. Departing employees will not receive compensation for unused leave and employees who are rehired will not have any previously unused sick leave reinstated.

### **Notice**

From Employees: Employers may require employees to follow their standard attendance procedures for when an employee is late or absent from work. Employers should be careful that they are not imposing rules that make it difficult or impossible for employees to use their sick leave.

From Employers: Employers must display [this poster](#) in a place that employees will see it.

### **Documentation**

Employers may ask for reasonable documentation of the need to use sick leave. Employees must be provided with at least three days to turn in the requested documentation. Employee health information, and that of employees' relatives, should be kept confidential unless the employee grants permission for its release or it is required by law to be disclosed.

### **Retaliation**

It is unlawful for an employer or any other person to deny, interfere with, or fail to pay for sick time an employee has the statutory right to use. Retaliation or discrimination with respect to terms and conditions of employment because an employee inquires about, requests, or uses sick time, or participates in any investigation related to this statute is unlawful.

# COVID-19 (Coronavirus) Unemployment Benefits Questions and Answers

## Q1. What programs are offered to assist businesses to keep workers during COVID-19?

**A.** If employers are financially distressed, but hope to continue operations by cutting back hours, they are encouraged to use the Unemployment Insurance Agency's [Work Share program](#) which allows employers to maintain employment levels and business operations during declines in regular business activity, rather than laying off workers. More information about the program can be found at [www.michigan.gov/workshare](http://www.michigan.gov/workshare).

## Q2. If I need to temporarily shut down my business due to a possible COVID-19 contamination or quarantine at the worksite, can I receive a relief of benefit charges?

**A.** An employer or employing unit will not be charged for unemployment benefits if their employees become unemployed because of an executive order requiring them to close or limit operations.

## Q3. Will my UI tax rate increase if my employees file for benefits?

**A.** An employer or employing unit that is required to close or limit its operations due to an executive order, will not have a UI tax rate increase if its employees file for benefits.

## Q4. What if I need to temporarily lay off employees due to a slowdown of business which is not directly linked to COVID-19?

**A.** Due to the uncertainty regarding potential congressional action regarding whether and how furloughed workers will be able to access federal paid sick, family and medical leave resources, **employers are strongly urged to place employees on temporary leave and advise the workers that they expect to have work available within 120- days as opposed to termination.** There is no additional cost to employers, employees remain eligible for UI benefits through the state, and employees may remain eligible for potential federal assistance.

### Here are some steps for employers placing employees on temporary unpaid leave:

- Do not terminate the employee – specify a temporary/indefinite leave with an expected return to work date that is within 120 days of the layoff date.
- Do not create a contractual obligation to bring the employee back to work – Let the employee know that the situation is fluid and subject to change.
- Provide the employee with a formal [Unemployment Compensation Notice](#) (Form 1711). Employers will need to provide their Employer Account Number and Federal Identification Number.
- Communicate to the employees about their rights. Under one of Governor Whitmer's recent [Executive Orders](#), workers who are placed on leave, or who are unable to work because they are sick, quarantined, immunocompromised, or have an unanticipated family care responsibility as a result of a government directive, are eligible for unemployment insurance benefits.
- Ensure employers are provided information on how to obtain unemployment insurance benefits. [A factsheet can be found here.](#)
- Get each employee's up-to-date contact information.
- Let employees know if you will be putting updated information on the entity's website or intranet, if applicable.
- Appoint a single or limited number of individuals who will field questions and communicate that information to employees.
- Keep a tally of all questions and answers. Periodically share information with employees.

The state is monitoring issues related to continued medical insurance coverage and will update accordingly.

**Q5. What will happen to my employees if I go out of business due to impacts from COVID-19?**

**A.** If you lay off employees due to a permanent closure, they can apply for unemployment benefits.

**Q6. Can my employees file a claim if they have COVID-19 and cannot come to work?**

**A.** If an employee has COVID-19 and cannot come to work, he or she should first use any paid sick leave or paid time off prior to applying for unemployment benefits. If an employee does not have any paid sick leave or paid time off, they may be eligible for unemployment benefits. **Q7. When should impacted employees file their claim?**

**A.** A claim for unemployment benefits begins the week it is filed. Workers should file their claim during their first week of unemployment.

**Q8. Can my employees file for benefits if I tell them to stay home because I think they are a risk of spreading or at risk of contracting COVID-19?**

**A.** If you tell an employee to stay home because you think her or she is at risk of spreading or contracting COVID-19, he or she should first use any paid sick leave or paid time off prior to applying for unemployment benefits. If an employee does not have any paid sick leave or paid time off, they may be eligible for unemployment benefits.

**Q9. Can my employees file for UI benefits if I reduce their hours because of COVID-19?**

**A.** Yes

# **SECTION FIVE**

## **Sample Letters and Forms**

**As of March 25, 2020**

# CORONAVIRUS (COVID-19)

## SAMPLE COMMUNICATION TO EMPLOYEES

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This sample communication should be customized for each employer's company and unique situation. This document reviewed as of March 4, 2020 and is subject to change at any time.

[Company] considers the health and safety of our employees and their families our priority. With that in mind, we would like to provide you with the following information regarding the coronavirus (formally known as COVID-19). We will continue to monitor COVID-19 and will provide updates to you with changes.

### Business Travel

**Option 1:** At this time, we are still operating in a "business as usual" mode and are authorizing business travel as it is needed. However, if you are concerned about traveling, raise your concerns to your supervisor. We will work with you to devise plans to accomplish what needs to be accomplished from your home base if doing so is feasible.

**Option 2:** We are temporarily suspending [all/specific] business travel until [further notice/specific date]. Speak with your supervisor if you have any questions about cancelling planned travel.

### Remote Work

**Option 1:** If your job allows and you'd prefer to work from home for a period of time, speak with your direct supervisor about making arrangements.

**Option 2:** The nature of our work/certain positions may make remote work unfeasible. See the "illness and sick leave" section below for guidance. If you have specific concerns, speak with your supervisor.

### Family Needs

If you have children who are impacted by a school closing (or may be impacted by one in the future) and this presents a hardship, let your supervisor know. If you are able to work from home to accommodate family needs, we support you with this flexibility with the caveat that you are expected to maintain your high level of performance when working remotely.

### Keeping the Workplace Safe

The protocol for protecting yourself and others in the workplace against COVID-19 is outlined by the Centers for Disease Control and Prevention (CDC) guidelines. These are simple everyday practices that can be used both at home and in the workplace to protect against bacteria and viruses:

- Wash your hands frequently;
- Cover your coughs and sneezes with a tissue or the inside of your elbow; and
- Avoid touching your face.

In addition, clean personal workspace items that are frequently touched, such as your desk, computer mouse, and keyboard, with cleaning spray or wipes [indicate if sanitizers/cleaners will be available].

### Illness and Sick Leave

If you feel any signs of illness, we encourage you to work from home if your position allows. If you have a fever and cough, notify your direct supervisor and stay home until you receive medical care and recover. **We urge you to stay home and use your sick time if you do not feel well or for preventative care should you feel the need.** Speak with your

supervisor if you have specific questions about telecommuting or absences so that your workload can be distributed or deadlines updated.

See our sick leave policy [reference company sick leave policy or special policy implemented temporarily].

## Personal Travel

Employees are asked to report all personal travel from and to [CDC Warning Level 3 countries, Alert Level 2 countries, etc.] to [HR or other designated company representative] as soon as possible. This includes your return from any of these countries within the past 14 days and all planned future travel.

## Household Risks Related to the Workplace

If someone lives in your household who has been diagnosed with coronavirus, or has traveled to and returned from a [CDC Warning Level 3 country/identified countries of heightened risk as determined by the CDC], or who will do so in the near future, notify [HR or other designated company representative] as soon as possible.

## Potential Office Closures

While we do not foresee the need to close any of our offices at this time, we will communicate with all employees should things change. It is a good idea to take your laptop chargers and peripherals home with you after work so you are prepared to work from home if needed.

**Thank you for your flexibility and understanding. If you have specific questions or concerns, speak with your supervisor.**

## FURLOUGH LETTER (COVID-19)

---

[date]

[employee name and address]

Re: Notice of Furlough

Dear [employee name],

We regret to inform you that because of the current level of work available as a result of COVID-19, we have opted to place you on furlough (temporary layoff) during the next [number] weeks. You are not authorized to work during the furlough without advance written authorization from [manager, supervisor, or other].

The furlough will begin on [date]. We are hopeful that we will be able to restore you to your prior position with our company on or around [date]. However, it is important to note that we reserve the right to change this date based on our business needs.

During this period:

1. You will retain your seniority with the company.
2. **[Remove language if not applicable]** The Company will pay for both your portion and the company's regular contribution of your health insurance. Upon your return, you may be required to reimburse the company for the catch-up contributions.
3. You may be eligible for unemployment benefits during this time. We recommend contacting the [state] unemployment department for further information and to apply.
4. **[Remove language if not applicable]** If you have available vacation time/PTO that you would like to use during this time, you are welcome to use such time, but are not required to do so. If you would like to use some or all of your available vacation during this time, contact [insert name].
5. It is important to us that your transition into furlough and back to work goes as smoothly as possible. Therefore, if you have any questions or concerns regarding these transitions, contact [insert name].

We very much appreciate all of your contributions to the organization this year. We wish you all the best during this unprecedented time and are looking forward to your return to work following this furlough period.

Best regards,

Supervisor/Office Manager/HR Representative

# SAMPLE LETTER OF LAYOFF

[Date]

[Name]

[Street Address]

[City, State ZIP]

Dear [Employee's Name],

As you may be aware, [Organization Name] is [experiencing financial difficulties; about to merge with ABC Company; experiencing funding cuts, restructuring its operations, or other reason for this action].

It is with great sadness that we inform you that your position is subject to a layoff. According to the organization's plan, your last day of employment at [Organization Name] will be [Date].

We ask that you keep us posted as to your current address so that we may send you employment-related paperwork, such as your W-2.

If you participate in the company-sponsored insurance plans, information will be forthcoming regarding the method to use to continue your insurance benefits.

Should a third party contact us for an employment reference, our company policy is that we will only provide your dates of employment and job title(s) with the Organization. We will also verify your salary history with our organization if you would like for us to do so. Please note that we reserve the right to provide additional information upon the request of a government entity or when we are legally required to provide such information.

To assist you with the transition, we are offering you a severance package. The details of that severance offering are listed in a separate Severance Agreement that we will provide to you.

We have also attached a Letter of Recommendation that you are welcome to provide to prospective employers if you would like.

We would like to do all we can to assist you with this transition. Therefore, if you have any questions regarding your final pay, benefits, 401(k), etc., please do not hesitate to address your questions to [Insert Contact Name and Information]

We would like to express our sincere gratitude for your contributions to the organization. And we wish you all the best in your future endeavors.

Sincerely,

[Name]

[Title]

**Legal Disclaimer:** This document is intended for informational purposes only, and does not constitute legal information or advice. This information and all HR Support Center materials are provided in consultation with federal and state statutes and do not encompass other regulations that may exist, such as local ordinances. Transmission of documents or information through the HR Support Center does not create an attorney-client relationship. If you are seeking legal advice, you are encouraged to consult an attorney.



# LETTER OF TEMPORARY LAYOFF

[Date]

[Employee Name]

[Street Address]

[City, State ZIP]

Dear [Employee Name]

We regret to inform you that due to business conditions and financial constraints, we have made the difficult decision to temporarily lay-off some of our staff, and your position specifically. We are hopeful that we will be able to restore you to your prior position with our company on [Insert Date].

During this period:

- If you currently are enrolled in our medical, dental, and/or insurance plans, the company will pay the premiums for your plan(s) during this time.
- Your current accrued vacation balance will remain unchanged during this time. (You will not accrue more vacation hours and you will not lose any previously accrued vacation hours.) You may request to use a portion or the entire balance of your accrued vacation hours during this time.
- You may be eligible for unemployment benefits during this time. In order to pursue this option, we recommend that you contact the [state unemployment department].

We very much apologize for the burden that this temporary layoff places on you and your family. We are hopeful to be able to restore you to employment soon. Please keep us posted as to how we may best assist you during this time.

Best regards,

[Signature]

[Name and Position Title]

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## **Notice of Reduction in Force (RIF) Due to Coronavirus**

Dear [Employee name],

Due to the economic impact of COVID-19 (coronavirus), [Company name] is implementing measures to ensure the financial stability of the company. The current pandemic situation has impacted our business significantly, and as a result, we find that we must make some difficult personnel decisions.

We have explored many options, including [describe options]. Unfortunately, these efforts have been unsuccessful, and we find that we must reduce our workforce at this time.

We have concluded that we must eliminate approximately [number] positions. It is with deepest regret that I inform you that your position is one that will be eliminated effective [date].

A representative from human resources will meet with you today to answer your questions and to discuss available separation benefits, including the services of an outplacement firm to provide counseling and assistance in finding another job.

Please accept our appreciation for your contributions during your employment with [Company name].

## ESSENTIAL BUSINESS LETTER (COVID-19)

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[Disclaimer: Businesses should consult the relevant guidelines to determine whether they are an essential business.]

[date]

[employee name and address]

To whom it may concern:

The employee identified above is employed by **[name of business]**, which **[describe services your business provides]** and is continuing operations at **[address of business]** during the shelter-in-place order as an essential business under relevant law.

**[Company name]** is committed to complying with the relevant requirements and appreciates your assistance in enabling our employee to continue to provide essential functions to the community. This employee generally works a schedule of **[X to X]** and this letter does not apply to time outside of normal working hours. If you have any questions, please contact me at the number below.

Sincerely,

---

[Name of executive]

[Phone number]

# EMERGENCY PAID SICK LEAVE AND EMERGENCY FMLA REQUEST FORM

Employee Name	Employee ID Number	Date
Title	Supervisor	Department
Leave Start Date	Leave End Date	Total Hours Requested

I CERTIFY THAT AM UNABLE TO WORK (OR TELEWORK) FOR THE FOLLOWING REASON:

I am subject to a **federal, state, or local quarantine or isolation** order related to COVID-19 that specifically prevents me from working.

Name of the government entity issuing the order:

I have been **advised by a health care provider to self-quarantine** because of concerns related to COVID-19.

Name of the advising healthcare provider:

I have **symptoms of COVID-19** and I am seeking (or have sought) a diagnosis.

I am **caring for another individual** who is subject to quarantine or has been advised by a health care provider to self-quarantine related to COVID-19.

Name of person I am caring for and our relationship:

Name of the government entity issuing the order:

**OR**

Name of the advising healthcare provider:

I **need to care for my child(ren)** because their school or childcare provider is closed or unavailable because of COVID-19. I **certify that no other suitable person is available to care for the child(ren) during the period of requested leave.** If listed child is over 14, I further certify that there are special circumstances that require me to provide care for them.

Name(s) and age(s) of child(ren):

Name of closed school(s) or place(s) of care:

I am experiencing **other conditions substantially similar** to COVID-19 as specified by the Department of Health and Human Services.

**I certify that the above information is truthful and understand that misrepresenting my need for leave is grounds for discipline, up to and including termination.**

Employee Signature:

If signing electronically, please type your full name, followed by "e-signed."

# **SECTION SIX**

## **Sample Company Policies Template**

**As of March 25, 2020**

# FMLA Leave Expansion and Emergency Paid Sick Leave Policy (Coronavirus)

## Purpose

To comply with the Families First Coronavirus Response Act and to assist employees affected by the COVID-19 outbreak with job-protected leave and emergency paid sick leave. This policy will be in effect from April 1, 2020, until December 31, 2020. Our existing FMLA leave policy still applies to all other reasons for leave outside of this policy.

## Expanded FMLA Leave

### Employee Eligibility

All employees who have been employed with [Company Name] for at least 30 days.

### Reason for Leave

Eligible employees who are unable to work (or telework) due to a need to care for their child when the school or place of care has been closed, or the regular childcare provider is unavailable due to a public health emergency with respect to COVID-19.

“Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is-

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

“Childcare provider” means a provider who receives compensation for providing childcare services on a regular basis, including:

- a center-based childcare provider
- a group home childcare provider
- a family childcare provider (one individual who provides childcare services for fewer than 24 hours per day, as the sole caregiver, and in a private residence)
- other licensed provider of childcare services for compensation
- a childcare provider that is 18 years of age or older who provides childcare services to children who are either the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, at the direction of the parent.

“School” means an elementary or secondary school.

### Duration of Leave

Employees will have up to 12 weeks of leave to use from April 2, 2020, through December 31, 2020, for the purposes stated above. This time is included in and not in addition to the total FMLA leave entitlement of 12 weeks in a 12-month period.

For example, if an employee has already taken 6 weeks of FMLA leave, that employee would be eligible for another 6 weeks of FMLA leave under this policy.

*[Omit the last two sentences in this section above if the employer has fewer than 50 employees and is not usually covered under the FMLA]*

## **Pay During Leave**

Leave will be unpaid for the first 10 days of leave; however, employees may use any accrued paid vacation, sick or personal leave during this time. The employee may also elect to use the paid leave provided under the Emergency Paid Sick Leave Act, as further explained below. After the first 10 days, leave will be paid at two-thirds of an employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work. Pay will not exceed \$200 per day, and \$10,000 in total. Any unused portion of this pay will not carry over to the next year.

For employees with varying hours, one of two methods for computing the number of hours paid will be used:

- The average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type. Or,
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

## **Employee Status and Benefits During Leave**

While an employee is on leave, the company will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. During any unpaid portions of leave, the employee must continue to make this payment per instructions from the HR department.

If the employee contributes to a life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid leave. During any portion of unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the employer may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

## **Procedure for Requesting Leave**

All employees requesting FMLA leave must provide written notice, where possible, of the need for leave to the HR manager as soon as practicable. Verbal notice will otherwise be accepted until written notice can be provided. Within five business days after the employee has provided this notice, the HR manager will complete and provide the employee with any Department of Labor (DOL) required notices.

The notice the employee provides should include a brief statement as to the reason for leave, and if possible, the expected duration.

On a basis that does not discriminate against employees on FMLA leave, the company may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

## **Employee Status After Leave**

Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The company may choose to exempt certain key employees from this requirement and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to business operations.

Key employees will be given written notice at the time FMLA leave is requested of his or her status as a key employee.

*[Employers with fewer than 25 employees may wish to adopt the following language in lieu of the preceding paragraph:]*

Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. If the position the employee held before leave started no longer exists due to economic conditions or operational changes that are made because of the public health emergency, and no equivalent position is available, the employee will not be returned to employment. However, for the period of one year after qualifying leave under this policy ends, [Company Name] will make reasonable efforts to contact the employee if an equivalent position becomes available.

Please contact the HR department with any questions.



## Emergency Paid Sick Leave

### Eligibility

All full- and part-time employees unable to work (or telework) due to one of the following reasons for leave:

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 either number 1 or 2 above.
5. The employee is caring for his or her child if the school or place of care of the child has been closed, or the childcare provider of such child 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.

“Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is-

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

[Note: A definition for “individual” should be provided as soon as more guidance is available.]

### Amount of Paid Sick Leave

All eligible full-time employees will have up to 80 hours of paid sick leave available to use for the qualifying reasons above. Eligible part-time employees are entitled to the number of hours worked, on average, over a two-week period.

For employees with varying hours, one of two methods for computing the number of hours paid will be used:

- The average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type. Or,
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

### Rate of Pay

Paid emergency sick leave will be paid at the employee's regular rate of pay, or minimum wage, whichever is greater, for leave taken for reasons 1-3 above. Employees taking leave for reasons 4-6 will be compensated at two-thirds their regular rate of pay, or minimum wage, whichever is greater.

Pay will not exceed:

- \$511 per day and \$5,110 in total for leave taken for reasons 1-3 above;
- \$200 per day and \$2,000 in total for leave taken for reasons 4-6 above.

### Interaction with Other Paid Leave

The employee may use emergency paid sick leave under this policy before using any other accrued paid time off for the qualifying reasons stated above.

Employees on expanded FMLA leave under this policy may use emergency paid sick leave during the first 10 days of normally unpaid FMLA leave.

### **Procedure for Requesting Emergency Paid Sick Leave**

Employees must notify their manager or the HR manager of the need and specific reason for leave under this policy. A form will be provided to all employees on the company intranet and/or in a manner accessible to all. Verbal notification will be accepted until practicable to provide written notice.

Once emergency paid sick leave has begun, the employee and his or her manager must determine reasonable procedures for the employee to report periodically on the employee's status and intent to continue to receive paid sick time.

### **Carryover**

Paid emergency sick leave under this policy will not be provided beyond December 31, 2020. Any unused paid sick leave will not carry over to the next year or be paid out to employees.

### **Job Protections**

No employee who appropriately utilizes emergency paid sick leave under this policy will be discharged, disciplined or discriminated against for work time missed due to this leave.

Please contact the HR department with any questions.

## Temporary Telecommuting Policy

In the event of an emergency such as a weather disaster or pandemic, [Company name] may allow or require employees to temporarily work from home to ensure business continuity.

Procedures:

In the event of an emergency, [Company name] may require certain employees to work remotely. These employees will be advised of such requirements by the department manager. Preparations should be made by employees and managers well in advance to allow remote work in emergency circumstances. This includes appropriate equipment needs, such as hardware, software, phone and data lines. The IT department is available to review these equipment needs with employees and to provide support to employees in advance of emergency telework situations.

For voluntary telework arrangements, either the employee or department manager can initiate a temporary telecommuting agreement during emergency circumstances. The employee and manager will discuss the job responsibilities and determine if the job is appropriate for a telecommuting arrangement, including equipment needs, workspace design considerations and scheduling issues.

A telecommuting agreement will be prepared by human resources and signed by the employee and his or her manager.

The employee will establish an appropriate work environment within his or her home for work purposes. [Company name] will not be responsible for costs associated with the setup of the employee's home office, such as remodeling, furniture or lighting, nor for repairs or modifications to the home office space.

[Company name] will determine the equipment needs for each employee on a case-by-case basis. Equipment supplied by the organization is to be used for business purposes only.

Consistent with the organization's expectations of information security for employees working at the office, telecommuting employees will be expected to ensure the protection of proprietary company and customer information accessible from their home office.

Employees should not assume any specified period of time for emergency telework arrangements, and [Company name] may require employees to return to regular, in-office work at any time.

# Work From Home Policy

Employees are permitted to work from home (WFH) occasionally or regularly, depending on a number of factors and the arrangements they've made with their manager. Working from home is a privilege that may be revoked at any time. The Company may request that an employee be present in the office at any time (regardless of scheduled WFH time) or deny a request to work from home based on business needs, employee performance, or viability of doing the work from home. To be eligible to WFH, an employee must have access to reliable internet and a space that is free from excessive noise or distraction.

## Submitting Requests

Employees must enter their remote work request in *[website/calendar/team communication tool]* and notify appropriate team members. Requests for recurring or extended WFH arrangements will be considered after **[3, 6, 12 months]** of employment, or in the case of a public health emergency.

Employees wishing to request additional remote workdays in any given workweek are required to speak with their manager in advance for approval. If approved, the employee must enter the request in *[website/calendar/team communication tool]* and notify appropriate team members.

## Costs

The Company will supply the employee with appropriate office supplies and reimburse the employee for all other reasonable business-related expenses. Employees must get pre-approval for expenses associated with working from home if they are more than \$40 in total. Any equipment supplied by the Company is to be used for business purposes only, unless otherwise specified. Employees must take appropriate action to protect these items from damage or theft.

The Company is not responsible for costs associated with initial setup of the employee's home office such as remodeling, furniture or lighting, or for repairs or modifications to the home office space.

## Security

As with employees working in the office, those who WFH will be expected to ensure the protection of proprietary Company and customer information through use of locking doors, desks, file cabinets, and media storage, regular password maintenance, and any other steps appropriate for the job and the environment. Unless you live alone, computers should be locked when you walk away and other household members should be not allowed access to or use of Company property.

## Expectations

When working from home employees must:

- Work their full, typical schedule
- Attend all meetings in a virtual capacity
- Achieve the same level of production as in the office
- Maintain equivalent availability for colleague and client communication, supervisor questions, .
- Be available online and by phone for the duration of their usual workday, minus breaks and rest periods
- Respond promptly to communication via messaging app, email, and phone
- Take all required break and rest periods, as if they were in the office
- Communicate consistently regarding their workload and status (break, lunch, working on a project, etc.)
- Follow all company procedures and policies
- Refrain from using alcohol or illegal drugs

# WORK FROM HOME AGREEMENT

## GENERAL WORK ARRANGEMENTS

This document specifies the terms and conditions of the Work From Home Agreement between [employee name] and [Company], beginning on [date] and ending on [date].

The days and hours when the employee is expected to be physically present in the workplace are [days] between the hours of [hours] and additional times designated by their supervisor.

1. The alternate work site is [address].
2. The days and hours when the employee is expected to work from home are [days] and [hours].
3. The employee's duties and responsibilities:
  - a. Will remain the same as when working at the regular Company worksite; OR
  - b. The specific duties and assignments authorized to be conducted at this alternate worksite are [duties].
4. Effective communication is essential for this arrangement to be successful. The employee agrees to remain accessible during designated work hours. The following methods and times of communicating are agreed upon: [contact methods, individuals, required frequency of communication, etc.].
5. The Company may terminate this agreement at any time, without notice, for any reason or no reason at all.

## POLICIES AND PROCEDURES

1. All applicable Employee Handbook policies apply.
2. All employees must track and record their hours worked in the same manner required as when working at the regular Company worksite.
3. Nonexempt employees:
  - a. Break and rest periods must be taken as required by law and/or Company policy.
  - b. Requests to work overtime or to use sick leave, vacation, or other leave must be approved by the employee's supervisor in the same manner as required when working at the regular Company worksite.
4. The employee agrees to and understands that all obligations, responsibilities, terms, and conditions of employment with the Company remain unchanged, except those obligations and responsibilities specifically addressed in this agreement.

## SAFETY, EQUIPMENT, AND INFORMATION SECURITY

1. The employee agrees to maintain a work environment that is ergonomically sound, clean, safe, and free of obstructions and hazardous situations.
2. The employee agrees to use Company-owned equipment, records, and materials for Company business only, and to protect them against unauthorized or accidental access, use, modification, destruction, or disclosure. The precautions described in this agreement apply regardless of the storage media on which information is recorded, the locations where the information is stored, the systems used to process the information, or the processes by which the information is handled.
3. The employee agrees to report to the Company any instances of loss, damage, or unauthorized access at the earliest reasonable opportunity.
4. The employee agrees to allow electronic and/or physical access to their remote worksite for purposes of assessing safety, property maintenance, and security methods, as well as job performance.
5. The employee agrees to report work-related injuries to the supervisor at the earliest reasonable opportunity. The employee agrees to hold the Company harmless for injury to others at the alternate work site.

**EQUIPMENT, FURNITURE, AND SUPPLIES**

1. The employee agrees that the following equipment, furniture, services (e.g., telephone, internet connection, etc.) and/or supplies will be supplied by the Company: [items provided and details of purchase, pick-up, delivery, set-up, maintenance, etc.].
2. The employee understands that all equipment, records, and materials provided by the Company remain the property of the Company.
3. The employee agrees to return Company equipment, records, and materials within five business days of termination of this agreement.
4. Upon request, any Company-issued equipment must be returned to the Company by the employee for inspection, repair, replacement, or repossession within five business days.
5. All equipment, furniture, and/or supplies not listed in item one will be supplied and maintained by the employee.
6. The employee understands that their personal vehicle will not be used for Company business unless specifically authorized by the Company.

**TAXES AND ZONING REGULATIONS**

The employee understands that they are responsible for tax consequences, if any, of this arrangement, and for conformance to any local zoning regulations.

**EMPLOYEE ACKNOWLEDGMENT**

I have read and understand this Work from Home Agreement. I understand that violations of this agreement may result in disciplinary action up to and including termination of employment.

**Employee Signature:** \_\_\_\_\_

**Employee's Name (print):** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Representative Signature:** \_\_\_\_\_

**Representative's Name (print):** \_\_\_\_\_ **Date:** \_\_\_\_\_

## ACKNOWLEDGEMENT OF RECEIPT OF COMPANY PROPERTY & FINANCIAL OBLIGATION FORM

Employee Name (Last, First, & Middle)	Employee ID Number	Date
Employee Title	Supervisor	Department

I commit to treating the company-issued equipment with reasonable care while I am employed, and understand that intentional misuse, damage or negligent use of such equipment may subject me to disciplinary action, up to and including termination. I hereby acknowledge receipt and assignment of the following Company property:

- Office/Building Key                                 #:  
\_\_\_\_\_
- Identification/Security Access Card     #:  
\_\_\_\_\_
- Cell Phone   Inventory/Serial #:  
\_\_\_\_\_
- Computer   Inventory/Serial #:  
\_\_\_\_\_
- Uniform   List:  
\_\_\_\_\_
- Safety Equipment                                     List:  
\_\_\_\_\_
- Other Equipment  
\_\_\_\_\_
- Other  
\_\_\_\_\_
- Other  
\_\_\_\_\_

**RETURN OF PROPERTY AND CLOSING OF ALL OPEN FINANCIAL OBLIGATIONS**

In the event of my termination from employment, upon my last day of work or a date specified by my supervisor, I will settle all open employee accounts (e.g., cash advances, credit card liabilities) in full and return all tools and company property specified above, on an attached sheet, or that otherwise comes into my possession.

If any property is not returned, I authorize a reasonable value for such items to be deducted from my final paycheck, and if applicable, any final reimbursement owed to me. Should the company be unable to collect from my final paycheck or other reimbursement, I acknowledge that the Company may invoice me or pursue legal action against me at its discretion.

**Employee Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**NOTE TO EMPLOYERS:** Before deducting any monies from a final paycheck or other funds owed to the employee you should ensure that this practice is legal in your state. Additionally, even if the practice is legal, you should be aware that any deduction that would cause an employee to be paid less than minimum wage for hours worked will be a violation of the Fair Labor Standards Act (FLSA) and state minimum wage requirements and could lead to significant penalties.

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Provided by

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