



## Emergency Paid Sick Leave

**CARES Act** — the Coronavirus Aid, Relief, and Economic Security Act. The comprehensive aid package includes direct payments to Americans, an expansion of unemployment insurance and billions in aid to large and small businesses. As of March 26th, the bill has been passed by the senate and resides with the House. The House has scheduled a vote for Friday, March 27th. Once the bill is passed by the House, it will move ahead for signature from President Trump. We are closely monitoring the passage of this bill and will provide a summary of the final passed bill when it is available. [Read the current full bill here.](#) [Read the most recent article from 3/27/20 Here](#)

**FFCRA Act** — The Families First Coronavirus Response Act included a number of provisions related to paid family/medical leave and paid sick leave, including a tax credit for employers intended to fully cover the cost of leave. The second of three bills passed by Congress in response to COVID-19 creates emergency paid sick leave along with paid family leave for individuals impacted by coronavirus/COVID-19. Employers can claim a 100 percent refundable tax credit against payroll taxes for employers and sole proprietors. This **Act takes effect April 1 and will remain in effect until December 31, 2020.**

If you have fewer than 50 employees and believe that these benefits will jeopardize the viability of your business, you may be able to elect this small business exemption. In order to do so, 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.

[Click here for an overview of the act.](#)

[Read the full bill here.](#) Find out specifics of the leave provided by the bill in the document below. [Read the FAQ on the FFCRA Act here.](#)

[There are several FAQ's that can be answered here.](#) including:

### **Assuming I am a covered employer, which of my employees are eligible for paid sick leave and expanded family and medical leave?**

There is one difference regarding an employee's eligibility for paid sick leave versus expanded family and medical leave. While your employee is eligible for paid sick leave regardless of length of employment, your employee must have been employed for 30 calendar days in order to qualify for expanded family and medical leave. For example, if your employee requests expanded family and medical leave on April 10, 2020, he or she must have been your employee since March 11, 2020.

### **Who is a covered employer that must provide paid sick leave and expanded family and medical leave under the FFCRA?**

Generally, if you employ fewer than 500 employees you are a covered employer that must provide paid sick leave and expanded family and medical

leave. For additional information on the 500 employee threshold, see [Question 2](#) Certain employers with fewer than 50 employees may be exempt from the Act's requirements to provide certain paid sick leave and expanded family and medical leave.

**If I am a small business with fewer than 50 employees, am I exempt from the requirements to provide paid sick leave or expanded family and medical leave?**

A small business is exempt from certain paid sick leave and expanded family and medical leave requirements if providing an employee such leave would jeopardize the viability of the business as a going concern. This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- employer employs fewer than 50 employees;
- leave is requested because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; **and**
- an authorized officer of the business has determined that at least one of the three conditions described in [Question 58](#) is satisfied

The Department encourages employers and employees to collaborate to reach the best solution for maintaining the business and ensuring employee safety.

**What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?**

Private sector employers that provide paid sick leave and expanded family and medical leave required by the FFCRA are eligible for reimbursement of the costs of that leave through refundable tax credits. If you intend to claim a tax credit under the FFCRA for your payment of the sick leave or expanded family and medical leave wages, you should retain appropriate documentation in your records. You should consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit. You are not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.

If one of your employees takes expanded family and medical leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19, you may also require your employee to provide you with any additional documentation in support of such leave, to the extent permitted under the certification rules for conventional FMLA leave requests.

For example, this could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider.

### **What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?**

Your employer may also require you to provide additional in support of your expanded family and medical leave taken 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. For example, this may include a notice of closure or unavailability from your child's school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to you from an employee or official of the school, place of care, or child care provider. Your employer must retain this notice or documentation in support of expanded family and medical leave, including while you may be taking unpaid leave that runs concurrently with paid sick leave if taken for the same reason.

Please also note that all existing certification requirements under the FMLA remain in effect if you are taking leave for one of the existing qualifying reasons under the FMLA. For example, if you are taking leave beyond the two weeks of emergency paid sick leave because your medical condition for COVID-19-related reasons rises to the level of a serious health condition, you must continue to [provide medical certifications](#) under the FMLA if required by your employer.

### **Paid Sick Leave/Medical Leave/Family Leave**

#### ***Who is covered?***

- The expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees. 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.***

#### ***Who is eligible?***

- All employees of covered employers are eligible for two weeks of expanded family and medical leave for specified reasons related to COVID-19. Employees employed for at least 30 days are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19.

#### ***How long is the leave?***

- Two weeks (up to 80 hours) of expanded family and medical 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;
- Two weeks (up to 80 hours) of expanded family and medical 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 to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, 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; and
- Up to an additional 10 weeks of expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

### **TAX CREDIT TO COVER PAID SICK AND FAMILY LEAVE FOR EMPLOYEES**

#### ***What does this cover?***

- 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.

#### ***How am I reimbursed?***

- 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.
- **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.**

#### ***Examples of implementation***

- 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.