

FAMILIES FIRST CORONAVIRUS RESPONSE ACT SUMMARY SHEET

There are two main components of relief available under FFCRA: (A) emergency paid sick leave and (B) expanded coverage under Family and Medical Leave Act (“FMLA”). These provisions only apply to employers with fewer than 500 employees and all relief set to expire on December 31, 2020. An Employer is entitled to a fully refundable tax credit equal to the required paid sick leave in (A).

A. EMERGENCY PAID SICK LEAVE

This includes **wages** and **health and welfare contributions**. It does not include other fringe benefits unless there is a contractual basis to claim them. There are **four main questions** that need to be answered in analyzing leave availability and amount:

1. DOES THE EMPLOYEE HAVE A QUALIFYING REASON? In order to qualify for emergency paid sick leave, an employee must be subject to one of the following six qualifying conditions. **If not, they do not qualify.**

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 subject or advised to quarantine or isolation;
5. The employee is caring for a son or daughter whose school or place of care is closed, or the childcare provider is unavailable, due to COVID-19 precautions; or
6. The employee is experiencing any other substantially similar condition as specified by the Secretary of HHS in consultation with the Secretary of Treasury and the Secretary of Labor.

The employee’s required compensation is the employee’s **regular rate of pay** if they qualify under (1), (2), or (3), and the required compensation is **two-thirds (2/3)** of an employee’s regular rate under (4), (5), or (6).

2. IS THE EMPLOYEE FULL OR PART TIME? If the employee meets one of the six conditions, then they are entitled to:

1. A **full-time (40 hrs or more)** employee is entitled to 80 hours of paid sick time.
2. A **part-time (less than 40 hrs)** employee is entitled to the number of hours that such employee works, on average, over a 2-week period.

3. WILL THE EMPLOYEE MEET THE MAXIMUMS? Paid sick time cannot exceed \$511 per day and \$5,110 total for (1), (2), or (3) above (generally, an employee’s own illness or quarantine; and \$200 per day and \$2,000 in the aggregate for a use described in paragraph (4), (5), or (6) (care of family members)).

4. IS THE LEAVE FOR THE REASON STATED IN (5) OR HAS THE EMPLOYEE DEVELOPED A COVID-RELATED SERIOUS MEDICAL CONDITION? If so, see (B).

B. EXTENDED LEAVE UNDER THE FMLA

Additional extended leave may be available under the FMLA, after the exhaustion of the leave discussed in (A). FFCRA expansions to the FMLA are designed to work in tandem with the Emergency Paid Sick Leave Act. There are additional eligibility conditions needed to qualify for this expanded leave. Like the Emergency Paid Sick Leave, it includes **wages and health and welfare contributions**. It does not include other fringe benefits unless there is a contractual basis to claim them. There are **three main questions** that need to be answered in analyzing leave availability and amount:

1. DOES THE EMPLOYEE HAVE A QUALIFYING REASON? The Family and Medical Leave Act ("FMLA") has been expanded by the FFCRA for up to **12 total weeks** of FMLA leave:

"to care for the employee's child under 18 years of age, if the child's school or care provider is closed or unavailable due to a public health emergency."

Note that this leave expansion is the same as (5) under the Emergency Paid Sick Leave Act. In addition, if an employee, their spouse, child or parent is suffering a "serious medical condition" related to COVID-19, they would be entitled to additional normal FMLA leave in addition to any leave under the Emergency Paid Sick Leave.

2. HAS THE EMPLOYEE MET THE ELIGIBILITY REQUIREMENTS FOR EXPANDED LEAVE?

1. If the leave is **related to** situation (5) under the Emergency Paid Sick Leave Act, they must be employed for **30 calendar days** prior to requesting the leave, and by an employer with **fewer than 500 employees**. An employer is **entitled** to a fully refundable tax credit equal to the required paid sick leave.
2. If the leave is **unrelated to situation** (5) under the Emergency Paid Sick Leave Act (normal FMLA leave) they must have (1) worked for their employer for at least 12 months; (2) have at least 1,250 hours of service over the previous 12 months; and (3) worked at a location where at least 50 employees are employed by the employer within 75 miles. An employer is **not entitled** to a fully refundable tax credit equal to the required paid sick leave.

If an employee does not meet these requirements, they are **not eligible** for expanded leave.

3. WHAT DOES THE LEAVE PROVIDE? The first 10 days for which an employee takes leave can be unpaid, but employees can elect to use other paid benefits such as PTO to cover it. This would include Emergency Paid Sick Leave if an employee also meets the requirements for leave set forth in (A).

After the first 10 days, employers must provide paid leave at two-thirds (2/3) of an employee's regular rate. Paid leave can't exceed \$200 per day or \$10,000 in the aggregate. The Act also has a job restoration provision. It requires that an employee on leave be allowed to return to their previous position after leave is done. For employers with less than 25 employees, they do not have to hold an employee's job open if they can show that position was eliminated due to economic duress cause by a health emergency such as COVID-19.