

# Navigating COVID-19

## Employer Update

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# Agenda

- Families First Coronavirus Response Act (“FFCRA”)
- Essential Employers: Protecting Your Workforce

# Families First Coronavirus Response Act

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## FFCRA Overview

- Takes effect April 1, 2020
- Provides two types of paid leave related to COVID-19
  - Paid Emergency Sick Leave; and
  - Emergency FMLA
- Ends on December 31, 2020 (unless extended)

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# Covered Employers

- All public sector
- Private sector with fewer than 500 employees
  - Counted from the first day of the employee's leave

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# Small-Employer Exemption

- Employers > 50 employees
  - If giving the leave “would jeopardize the viability of the business as a going concern”
  - An authorized officer of the business must determine (and be able to certify) at least 1 of 3 reasons:

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## Small-Employer Exemption

- Providing the leave would cause expenses and financial obligations to exceed available business revenues and cause the business to cease operating at a minimal capacity.

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# Small-Employer Exemption

- The employee(s)' absence would entail a “substantial risk” to the financial health or operations
  - Because of their specialized skills, knowledge of the business, or responsibilities.



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# Small-Employer Exemption

- There will not be enough employees to operate at a minimal capacity

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# Poster Requirement

- DOL poster
- “May be emailed” or posted on your website (internal or external)

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# FFCRA: Emergency Paid Sick Leave

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## Paid Sick Leave: Overview

- Eligible employees can receive up to 2 weeks of paid leave for a qualified reason.
- All employees are covered
  - Regardless of length of service
  - “Health-care providers” and “first responders” may be exempted by the employer

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## Paid Sick Leave: Reasons for Leave

1. Employee is subject to a legal quarantine or isolation order;
2. Employee has been advised by a health-care provider to self-quarantine;
3. Employee is symptomatic and seeking a diagnosis;
4. Employee is caring for a person described in Reasons 1 or 2;
5. Employee is caring for a son or daughter whose school or day care is closed or child-care provider is unavailable;
6. "The employee is experiencing any other substantially similar condition specified by the Secretary of HHS"

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# Paid Sick Leave

- Not a qualified reason:
  - Employee is not comfortable coming to work

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# Amount of Leave

- Full-time employees
  - 80 hours
- Part-time employees
  - With regular schedule: Average hours worked over 2-week period
  - With varying schedule: 6 month average
  - New employees with varying schedule: #Hours reasonably expected to be scheduled

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## Rate of Pay

- Employee is reason for the leave (Reasons 1-3)
  - Regular rate of pay
  - Not less than minimum wage
- Employee is caring for another person (Reasons 4-5)
  - $\frac{2}{3}$  of the regular rate of pay



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## Caps on Leave Pay

- Reasons 1-3 (employee is staying home because subject to quarantine order or advise, or symptomatic)
  - \$511 per day;
  - \$5,110 in the aggregate
- Reasons 4-6 (caring for another)
  - \$200 per day;
  - \$2,000 in the aggregate

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# FFCRA: Emergency FMLA

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# Overview

- Eligible employees may receive up to 12 weeks of leave for qualified reason
- Eligible employees:
  - Minimum 30 days employment (as of first day of leave)\*\*
  - Health-care providers and first responders may be exempted

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## Reason for Leave

- Employee is unable to work (or telework) due to the need to care for son or daughter due to school or daycare closure or unavailability of child-care provider due to COVID-19
  - Child must be under 18

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# Duration of Leave

- Up to 12 weeks
- First 10 days may be unpaid

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# Rate of Pay for Leave

- First 10 days are unpaid
- Remainder is paid:
  - 2/3 regular rate
  - # hours normally worked
- Cap
  - \$200 per day
  - \$10,000 in the aggregate

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# FFCRA: Application

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# Summary

	<b>Childcare</b>	<b>Sick / Quarantined</b>	<b>Caring for family member</b>
Amt. of Leave	12 weeks	2 weeks	2 weeks
Rate of Pay	2/3 regular rate	Full rate	2/3 regular rate
Cap	\$200 / day	\$511 / day	\$200 / day



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# Layoffs

- Furloughed employees are not entitled to the leave
- If the business is closed (by the employer or by the State), no leave requirements

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## Specifics

- Employee may not be required to find or look for replacement coverage
- Employee may use PTO but may not be required to
- Can't be combined with unemployment
- Can't be used as a substitute for reduced hours
- No carry-over and no pay out at term

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# Intermittent Leave

- Not allowed if:
  - Employer does not allow; or
  - Employee is caring for themselves and not teleworking.

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# Intermittent Leave

- May be allowed if:
  - Employer permits; and
  - Employee can't telework normal hours; or
  - Employee is out for childcare
- Any increment agreed to by employee and employer

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# Certification

- You must get a certification from employee
- “as specified in applicable IRS forms, instructions, and information”
- For EFMLA, you can require additional documentation:
  - Governor’s Executive Order
  - Notice from the daycare’s website
  - Email from the employee

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## EFMLA vs. FMLA

- 12 weeks is still the max
  - 12-month period
  - Per your policy

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# Enforcement

- 30-day non-enforcement\*\*
- FLSA minimum wage violation

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# FFCRA: Tax Credits

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# Overview

- 1-to-1 Tax Credit
  - FFCRA Leave (both types); and
  - Cost to maintain health care during FFCRA Leave

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# Specifics

- Originally, to be credited at the end of the quarter
- March 20 IRS Guidance
  - Changed it to *immediate* (per payroll cycle) setoffs for covered costs
- Setoff against:
  - employee federal income tax withheld; and
  - employee portion of Social Security and Medicare taxes;
  - For *all employees*

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## Example

- Employer pays \$5,000 in sick leave
- Would otherwise be required to deposit \$8,000 in payroll taxes, including taxes *withheld from all its employees*,
- Can set off up to \$5,000 of the \$8,000
- Employer would be required to deposit the remaining \$3,000 on its next regular deposit date

# Essential Employers

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# Employee Temperature Checks

- Legally permissible for COVID-19
- Who conducts the checks
  - Limit to senior management or HR
  - Wear PPE
- Perform checks in private and not where other employees could observe the results
- Don't record results in personnel file

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# Employee Questionnaire

Q: Symptoms of respiratory infection, such as fever, cough, shortness of breath, or muscle aches?

- If Yes for known cause (such as asthma, COPD, chronic sinusitis, etc.), weigh the risks and consider sending the employee home.
- If Yes without known cause, the employee should isolate at home for at least 3 days from “recovery”
  - resolution of fever without the use of fever-reducing medications; *and*
  - improvement in respiratory symptoms (e.g., cough, shortness of breath); *and*
  - the passage of at least 7 days since symptoms first appeared.

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# Employee Questionnaire

- Q: Has employee been in close contact (e.g., within 6 feet for more than a few minutes) with a person with a confirmed COVID-19 infection.
- If Yes, employee should be required to stay home for 14 days from the date of exposure.

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# Disclosure

- If an employee tests positive or is symptomatic or self-isolating, all privacy rules apply
  - Give as much information as needed to notify those who may have come into contact *but*
  - Do not share the individual's name without his/her consent



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# Contact Information

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Clark Hill's COVID-19 Resource Page

<https://www.clarkhill.com/pages/covid-19>

[DOL FFCRA FAQ](#)

[DOL FFCRA Poster](#) and [FAQ](#)