

Recap of the FFCRA Leave Mandates

Generally, the Act provides that covered employers must provide to **all employees**:

- *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**:

- *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.

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:

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).

DOL Additional Guidance

T1. Requesting and Documenting Leave

E1. Employees must support leave requests with appropriate information and documentation.

- Information will be collected on the FMLA and emergency paid sick leave request forms provided by HR.
- Documentation may include a copy of the quarantine or isolation order, letter from health care provider advising self-quarantine, government notice of school closure, notice on child care website, or email from authorized representative of school or child care provider.

T2. What it Means to be UNABLE to Work or Telework

E2. Unable to work or telework means that an employer has work available, but one of the specified paid reasons for leave under the FFCRA prevents an employee from being able to do so.

- Alternate schedules or work hours (same hours per day but different hours) are viewed as ABLE to work and are not entitled to leave unless a qualifying reason prevents you from working the alternate schedule or work hours.
- If an employee can telework regular weekly hours while caring for a child, leave is unavailable.

T3. Intermittent and Incremental Use at Employer's Discretion

E3. Employees and employers may agree to intermittent and incremental use. This is divided into two situations: teleworking and working onsite

- Teleworkers may take intermittent or incremental for any of the covered reasons for leave if the employer agrees.
- Onsite workers can only take intermittent or incremental due to school or child care closure. All other covered reasons must be in full-day increments (intent is to prevent sick employees from spreading virus at work).

T4. Shelter-in-place and Work Hours Reduction

E4. DOL appears set on denying leave in these situations (from DOL FAQ #27 and #28 respectively):

- If your employer sent you home and stops paying you because it does not have work for you to do, you will not get paid sick leave or expanded family and medical leave, but you may be eligible for unemployment benefits.
- If your employer reduces your work hours because it does not have work for you to perform, you may not use FFCRA leave for the hours that you are no longer scheduled to work. Leave is available only for an employee's scheduled hours.

T5. Existing Benefits During FFCRA Leave

E5. Employees can't use existing leave benefits during FFCRA leave without employer consent and employers can't require employees to use existing benefits.

- Employees and employers must agree in order to use FFCRA paid leave and existing employer-provided leave benefits simultaneously. This is only allowable for FFCRA leave that pays out at two-thirds an employee's regular rate.
- The paid sick leave and expanded family medical leave can run concurrently, meaning employees do not have to use their existing benefits to cover the 10-day unpaid period for expanded family medical leave.