



FAMILIES FIRST CORONAVIRUS RESPONSE ACT (“FFCRA”)

Questions and Answers

What does the FFCRA require?

FFCRA requires certain employers to provide new, and temporarily available, paid leave to employees who are impacted by COVID-19-related issues in certain ways. Specifically, the FFCRA requires those employers to provide up to 80 hours of paid sick leave and up to 12 weeks of leave under the Family and Medical Leave Act (“FMLA”), the first 10 days of which are unpaid.

Does the FFCRA apply to churches and other religious organizations?

In general, the FMLA applies to any employer which is “engaged in commerce” and which employs at least 50 people. For the purposes of the leave provided by the FFCRA, an “employer” must be engaged in commerce and must have fewer than 500 employees. Thus, churches and religious organizations that already must comply with the FMLA will likely have to provide the 12 weeks of leave created by the FFCRA, unless they have 500+ employees. Those that have not previously been subject to FMLA requirements because they have fewer than 50 employees will have to provide the 12 weeks of leave if they are engaged in commerce.¹

The paid sick leave requirement applies to the same set of employers – *i.e.*, employers engaged in commerce that have fewer than 500 employees.²

When is the FFCRA effective?

The FFCRA paid leave requirements become effective as of April 1, 2020 and remain in effect through December 31, 2020.

Do part-time employees receive 80 hours of paid sick leave?

No. Part-time employees are eligible to receive an amount of paid leave equal to the average number of hours the employee works over a 2-week period.

How would an employee be eligible for the paid sick leave?

An employee would be eligible to receive this paid leave if the employee is unable to work or telework for any of the following reasons:

¹ Whether or not an employer is engaged in commerce depends upon the facts and circumstances applicable to that employer. Churches and other religious organizations could be deemed to be engaged in commerce if they, among other possibilities, have unrelated business income or operate a camp, day care, school, etc.

² The FFCRA does allow for an exemption for employers with fewer than 50 employees if providing the paid leave required by the FFCRA would “jeopardize the viability of the [employer] as a going concern.” This exemption would be governed by regulations issued by the Department of Labor.

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 an order as described in one of the first two items in this list.
5. The employee must care for a child because the child’s school or daycare is closed or because the child’s childcare provider 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.

How much is the employer required to pay an employee who takes this paid sick leave?

In general, the employee would be paid the employee’s regular rate of pay, if the employee is taking the sick leave because of one of the first three reasons listed above. However, an employer would not be required to pay more than \$511 per day and \$5,110 total.

If the employee is taking the sick leave for one of the last three reasons listed above, the employer must pay the employee at least 2/3 of the employee’s regular pay rate, up to maximum of \$200 daily and \$2,000 total.

Can an employer require an employee to use already-provided paid sick leave first?

No. If an employee is unable to work for any of the six reasons listed above, the employee may choose to first use the up to 80 hours of paid sick leave provided by the FFCRA. This paid sick leave is in addition to other paid leave provided by the employer.

How would an employee be eligible for the 12 weeks of FMLA leave?

The 12 weeks of FMLA leave provided by the FFCRA are available to an employee who is “unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”

Are all 12 weeks paid?

No. The FFCRA does not require the first 10 days of the FMLA leave to be paid. However, an employee may substitute other paid leave provided by the employer (vacation, sick, personal, etc.) during those 10 days. The employee could also use the 80 hours of paid sick leave provided by the FFCRA for those 10 days. Afterwards, an employer must then provide paid leave for up to 10 subsequent weeks.

How much is the employer required to pay during those 10 weeks?

The FFCRA requires an employer to pay at a rate that is at least 67% of the employee’s regular pay rate. However, the employer is not required to pay more than \$200 per day, even if that is less

than 2/3 of the employee's regular pay rate. The FFCRA also limits the total amount that must be paid by the employer over the 10-week span to \$10,000.³

Are churches and religious organizations eligible for the tax credits associated with these paid leaves even if they do not pay income taxes?

Yes. A church or other religious employer has access to tax credits to offset the costs of providing the paid leave required by the FFCRA. The credits are not against income taxes but are instead immediately applied to payroll taxes submitted and paid via IRS Form 941.

Are there limits to the amount of credits that can be claimed?

Yes. The credit that can be claimed for paid leave provided to an employee pursuant to the FFCRA is limited to the maximums that employers are required to pay for such leave. For example, if an employer paid an employee who was unable to work for 12 weeks in order to care for a child whose daycare facility was closed because of COVID-19 a total of \$15,000, the employer could only claim a credit for \$12,000.

Are any other costs recoverable?

The FFCRA provides for an additional credit based on the healthcare insurance costs related to an employee who takes paid leave under the FFCRA.

What other resources are available?

The Department of Labor has released the following:

- A set of [questions and answers](#).
- Fact sheets for [employers](#) and [employees](#).
- A [poster](#) that must be posted or otherwise provided to employees.

The Internal Revenue Service has made some [information](#) available about the process for claiming credits against payroll taxes. Additional guidance from both is expected over the coming weeks.

This Q&A document is for informational purposes only and should not be considered as legal or tax advice. Organizations with questions about the applicability of the FFCRA to their specific circumstances should consult with a legal or tax professional.

³ If combined with the 80 hours of paid sick leave provided by the FFCRA, the employee would be eligible to receive up to \$12,000 over a 12-week span.