

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

With the passage of the Families First Coronavirus Response Act, many companies have questions about how the new emergency sick leave and emergency paid family leave laws will impact their employees. This guide helps you determine eligibility, covered events, benefit duration, and benefit amount.

The effective date is 15 days after it was signed by President Trump on March 18, which would be April 1, and would not be retroactive. Keep in mind that with Congress working on additional legislation every day, these details are fluid and may change.

	EMERGENCY PAID SICK LEAVE	EMERGENCY PAID FAMILY LEAVE
WHO'S ELIGIBLE?	All employees of employers with fewer than 500 employees, regardless of their tenure with their employer.	All employees of employers with fewer than 500 employees, who have worked for the employer for at least 30 days.
COVERED EVENTS	<p>Employees who are unable to work, or telework, due to any of the following events:</p> <ol style="list-style-type: none"> 1. Employee who is subject to federal, state, or local quarantine. 2. An employee who is in self-quarantine upon advice from a medical professional due to COVID-19. 3. Employees experiencing symptoms of COVID-19 and seeking medical diagnosis. 4. An employee who is caring for an individual (not currently limited to immediate family but this may be clarified later) who is subject to quarantine or isolation due to COVID-19 or concerns related to COVID-19. 5. An employee who is caring for their child whose school or place of care is closed or unavailable due to COVID-19 concerns. 6. An Employee who is experiencing conditions specified by the Secretary of HHS in consultation with Secretaries of Treasury and Labor. The meaning of this clause will be clarified by the Secretary of HHS at a later date. 	<p>Employees who are unable to work (or telework) due to the following events:</p> <p>Employees who are unable to work, or telework, because the employee must care for their child (under 18) whose school or place of care is closed or otherwise unavailable due to the COVID-19 Public Health Emergency.</p>
BENEFIT DURATION	<p>Full Time Employees: 80 Hours</p> <p>Part-Time Employees: Equivalent number of hours they would work on average during a two-week period (a separate calculation is available for part-time employees whose schedules vary significantly from week to week).</p>	12 weeks total, the first two weeks (10 work days) may be unpaid.
BENEFIT AMOUNT	<p>For covered events 1-3: The benefit is paid out at their regular rate, however the benefit is capped at \$511 per day and \$5,110 in total.</p> <p>For covered events 4-6: The benefits is 2/3 of the employee's regular pay with a cap of \$200 a day not to exceed \$2,000 total.</p>	<p>The first 10 days of leave are unpaid, however, an employee can choose to use any accrued PTO during those 10 days. However, employers cannot compel employees to do so.</p> <p>After the initial 10 days, the employee will receive 2/3 of their regular pay rate, not to exceed \$200 a day or \$10,000 in total.</p>



FAQ: WHAT THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT MEANS FOR YOU

Are employers with fewer than 50 employees required to provide the benefits?

For the most part, yes. However, the DOL has recently released new information regarding the possible exemption for employers with fewer than 50 employees. They have provided clarification that small groups will only be able to apply to be **exempt from the child care-related paid sick leave and paid family leave** portion of the Act. This means that employers with fewer than 50 employees, even if approved for a hardship waiver, will still be required to provide emergency paid sick leave to employees for reasons 1-4 and 6.

To determine if a small business is exempt from the paid expanded family leave and paid sick leave (for reason 5 only), an authorized officer of the company must have determined that all three of the following apply:

- The employer employs fewer than 50 employees
 - The 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
 - The authorized officer has determined that at least one of the following three conditions is satisfied:
1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity
 2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities, or

3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity

- The authorized officer and business should clearly document this information.

How do I determine if my business has more than 500 employees? What if I am above 500 now and drop below later?

The determination as to whether or not you are subject to the act is going to be based on whether you have fewer than 500 employees at the time that an employee's leave is to be taken. When counting how many employees you have you would include all full-time and part-time employees, any employees on leave, employees who are jointly employed by you and another employer and day laborers supplied by a temp agency.

If I already offer my employees two weeks sick pay or PTO, do I still have to offer them the emergency paid sick time on top of it?

This Act does not replace your existing sick pay or PTO policy, this is in addition to any currently offered benefits. Employers are not allowed to modify their existing leave benefits and policies after the enactment in an effort to avoid the new requirements.

Do employers have to pay out unused emergency paid sick time when an employee leaves the company?

The Act specifically states that employers are not required to pay out any unused emergency paid sick leave at the end of employment.

Does unused emergency paid sick time rollover to next year?

No, the benefits cease to be available at the end of this year.

Can employers require that employees give advance notice of intent to take emergency paid sick time?

No, the Act states that employees are not required to give notice prior to the first workday they plan to take paid sick time. However, after the first day of benefits, employers may require the employee to follow reasonable notice procedures in order to continue paid sick time.

Can employers require employees to use up all other forms of available PTO prior to taking advantage of these new emergency benefits?

No, employers may not mandate that employees use other available benefits prior to using the emergency paid sick time or emergency paid family leave. However, employees can, at their discretion, choose to use these other benefits prior to utilizing the new emergency benefits should they so choose.

If an employee has already used their entire allotted FMLA allowance, are they still eligible for receive paid leave under FFCRA?

No, the FFCRA emergency paid family leave is simply an amendment to the existing FMLA law that allows an additional qualifying reason for covered leave and provides a paid component. It does not, however, grant additional leave in addition to the allotted FMLA time. Conversely, if an employee uses all 12 weeks of emergency paid family leave under FFCRA, that will count against their FMLA allowance.

Can employers require that an employee find a replacement to cover their scheduled hours as a condition of taking the sick pay?

No, the Act specifically notes that the sick pay cannot be conditioned on finding coverage for the hours/shifts that the employee is going to miss.

What is my total potential exposure per employee?

Based on the limits in place, the maximum exposure per employee is \$15,110 (\$5,110 maximum pay out available for paid sick time and \$10,000 maximum pay out for paid family leave).

If we lay off an employee after April 1, will they still be eligible for these benefits?

Generally, no. It is presumed that if an employee is on leave without pay, or terminated, they would not be entitled to the

benefits under FFCRA. The Act specifies that an employee has to be out of work due to one of the specified conditions, therefore, if they are on leave or terminated for a reason other than listed they would not be eligible. We strongly advise employers speak and consult with counsel before taking any adverse employment actions in light of the new bill.

What is considered as an employee's normal pay rate under this law? Are commissions included?

Under the FFCRA, the regular rate of pay is the average of the regular rate over a period of up to six months prior to the date on which the employee takes leave. If an employee has not worked for the current employer for at least six months, then the calculated pay rate is the average of the employee's regular rate of pay for each week that they have worked for the current employer. Commissions, tips and piece rates are all included as wages when calculating the pay rate.

Is there any sort of support for employers?

Employers who are subject to the FFCRA will receive financial assistance in the form of tax breaks. Eligible employers will receive a dollar-for-dollar reimbursement of all qualifying wages paid out under FFCRA via a payroll tax credit against the employer's payroll tax liability. For more information about how the tax credits, read our [breakdown of the program](#).

Where can I find the new notice posters that the DOL requires us to post?

You can download copies of these required notice posters from the DOL website:

- [Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave Under the Families First Coronavirus Response Act \(FFCRA\)](#)
- [Federal Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave Under the Families First Coronavirus Response Act \(FFCRA\)](#)

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

If you intend to claim the tax credit available under FFCRA you should retain appropriate documentation for your records. Employers may require that employees provide supporting documentation for their leave request. However, unlike other FMLA forms, the FFCRA paid leave does not require a signed third-party certification.

Appropriate documentation should include: The employee's name, qualifying reason for leave, a statement that the

employee is unable to work, including telework, for that reason, and the dates that they are requesting the leave for. Employers should also request and retain documentation of the reason for the leave, this includes a documenting any source of any quarantine or isolation order, name of the health care provider who has advised the employee to self-quarantine, a copy of any Federal, State, or local COVID-19 isolation order, etc.

Please note that existing certification requirements under the FMLA will remain in effect if an employee is taking unpaid leave for one of the existing qualifying reasons under FMLA.

It is also strongly advised that employers create new, separate, pay codes for FFCRA-covered leaves.

What information can I request when an employee requests to take the emergency paid family leave?

You may require the employee provide you with any additional documentation to support such a leave request to the extent permitted under the certification rules for conventional FMLA leave requests. Examples of documentation that the employee can provide could include: a notice that has been posted on a government, school, or day care website, a newspaper article or an email from an employee or official of the school, place of care or child care provider. As an employer you should retain these notices or documentation that was used to support the expanded family leave request.

How does the law define being “unable to work, including telework, for COVID-19 related reasons?”

An employee is considered unable to work if the employer has work available for the employee but the employee is unable to complete such work either under normal circumstances at your normal worksite or via telework, due to one of the specific COVID-19 qualifying reasons as listed in the FFCRA.

Note – to the extent you are able to telework while caring for your child, paid sick leave and expanded family and medical leave is not available.

Can an employee take FFCRA leaves intermittently while teleworking?

Yes, employees may take intermittent leave in any increment, provided that the employee and employer agree. For example, if you agree on a 90-minute increment, you could telework from 1:00 pm – 2:30 pm and then take leave from 2:30 pm – 4:00 pm and then return to teleworking. The DOL strongly encourages employers and employees to collaborate to achieve flexibility that supports both.

If an employer closed their offices prior to April 1, 2020 (the effective date of the FFCRA), are employees still eligible for FFCRA leaves?

No. If an employer sent employees home and stops paying them because it does not have work for them to do, the employees will not be eligible for FFCRA benefits. However, these employees may be eligible for unemployment.

Note – this is true whether the employer closed the worksite for lack of business or because it was required to close due to a Federal, State, or local directive.

If an employer closes their worksite on or after April 1, 2020, but before the employee takes leave, can the employee still receive FFCRA leave benefits?

No. If the employer closes after the FFCRA effective date, the employee will not be eligible for FFCRA benefits but may be eligible for unemployment.

Note – this is true whether the employer closed the worksite for lack of business or because it was required to close due to a Federal, State or local directive.

What happens if an employer closes their worksite while an employee is already out on FFCRA leave?

If an employer closes while an employee is out on FFCRA leave then the employer must pay for any benefits used before the worksite closed. However, as of the date that the employer closes the worksite the employee is no longer entitled to FFCRA leave benefits.

Note – this is true whether the employer closed the worksite for lack of business or because it was required to close due to a Federal, State, or local directive.

If an employer is open but furloughs an employee on or after April 1, 2020, can the employee receive FFCRA leave benefits?

No. If an employer furloughs an employee because there is not enough work available then the employee is not entitled to benefits under FFCRA.

Note – this is true whether the employer closed the worksite for lack of business or because it was required to close due to a Federal, State, or local directive.

Are employees eligible for both unemployment benefits and FFCRA benefits?

No, if an employer provides FFCRA benefits to an employee then they are not eligible for unemployment and vice versa. However, each state has its own rules and the DOL recently clarified additional flexibility to the states to extend partial unemployment benefits to workers whose hours or pay have been reduced. Employers should consult with their state unemployment office for specific questions about eligibility.

Must employers continue to provide healthcare coverage while an employee is out on FFCRA leave?

Yes. Employees are entitled to continued coverage on the same terms as if they were still actively at work.

Who is considered a child under FFCRA?

A “son or daughter” is the employee’s own child – this includes a biological, adopted, foster, stepchild, legal ward, or a child for whom the employee is standing in loco parentis. Additionally, an adult son or daughter (i.e. anyone 18 or older) is considered a child under FFCRA if they (1) have a mental or physical disability and (2) is incapable of self-care because of that disability.

ALDRICH IS HERE TO SUPPORT YOU

As always, your Aldrich Benefits team is here to provide support for you however we can during these rapidly changing times. Our team is closely monitoring the changing landscape of the COVID-19 pandemic and is here to answer your questions. For further information, please [contact your advisor](#). For more employer resources to help you navigate the developing impact of coronavirus on your business, visit our [COVID-19 Resource Center](#).

About Aldrich Benefits LP

We assist employers with employee benefit consulting including medical, dental, group life, and disability insurance for their employees and executive benefits for high level and key employees. Our services include plan design, implementation, and annual review of benefits. Aldrich Benefits LP is known as Aldrich Insurance Solutions LP in California.

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