

**Expanded Paid Leave<sup>1</sup>**  
Current as of May 5, 2020

*This document is for general informational purposes only and is not legal advice. Readers should consult their attorney, accountant, lender, and payroll provider to make determinations regarding their organization's specific requirements and to ensure compliance with all applicable laws and regulations. Because every organization's situation is unique, it is important that readers seek appropriate advice before taking or refraining from taking any action as a result of this document.*

This document is intended to provide an introduction to the paid leave requirements of the Families First Coronavirus Response Act (the "FFCRA"). Under the FFCRA, between April 1 and December 31 of 2020, employers are required to provide their employees paid leave for certain coronavirus related reasons. This document will explain the qualifying reasons for paid leave, how much leave and how much pay an employer must provide, and what documentation an employer needs to keep. A fully refundable payroll tax credit puts all of the cost of the paid leave on the federal government.

## **1. What employers and employees are covered?**

The FFCRA law covers all public sector employers (state, city, county, and other public sector entities) no matter how many employees they may have, and it covers all private sector employers with 500 or fewer employees. Private sector employers that employ more than 500 employees are not covered by the FFCRA. The law covers essentially all employees, both full time and part time but there is a special provision for an extra 10 weeks of leave for parents of children whose schools or daycares have been closed due to the coronavirus crisis. That particular component of the leave only applies to employees who have been employed at the same employer for 30 days or more.

As a starting point, if an organization has employees, it needs to go to the United States Department of Labor website and download the paid leave notice poster and post it next to its other required workplace posters. It can be found at [www.dol.gov](http://www.dol.gov).

## **2. What are the grounds for paid leave?**

There are six specific legal grounds for paid leave.

1. If the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. If the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. If the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. If the employee is caring for another person who fits into categories (1) or (2);
5. If the employee is caring for a child whose school or daycare is closed due to COVID-19;  
or
6. Similar conditions to be defined by the Secretary of HHS.

The first three categories are personal to the employee himself or herself. Reasons four and five are different in that they relate to situations where the employee is needed to care for

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<sup>1</sup> This document was drafted by Aaron Dettling, an attorney with Fortif Law Partners, LLC in Birmingham, Alabama.

someone else who is impacted by the virus in some way. Reason six hasn't been defined yet. Between now and the end of the year, the federal government may publish additional guidelines that might expand the grounds for paid leave, and those will fall under the reason six. As of May 5, 2020, however, only reasons one through five are applicable.

### **3. How much time, and how much pay?**

Next, it is important to understand how much time and how much pay an employee is entitled to receive when he or she goes out on paid leave under the Families first statute. When an employee needs leave for the first three reasons-- the employee should receive 80 hours or two weeks of leave and be paid at his or her regular rate of pay capped at \$511.00 per day. Now of course this is for a full-time employee who works 40 hours a week.

If the employee normally works fewer or more hours than 40 hours per week, then the employer may need to increase or decrease the number of leave hours accordingly but the maximum is always 80 hours. For reasons four and five, the maximum is still 80 hours, but the pay is only 2/3 of the employee's regular rate and that is capped at a maximum of \$200 per day.

Now it's also important to point out here that when the employee is a parent of a child whose school or daycare is closed because of coronavirus, the law provides for another 10 weeks of leave for a total of 12 weeks.

Employees are not allowed to receive paid leave under the FFCRA and unemployment compensation at the same time. Additionally, if an employer has received a PPP loan, then it may use the proceeds of the PPP loan to pay for the paid leave, but the portion of the loan proceeds that is used to pay for paid leave is not forgivable. That is because employers receive a dollar for dollar payroll tax credit for every dollar that they spend on paid leave. An employer can't get both the payroll tax credit and forgiveness of that part of the PPP loan. That would be double-dipping.

### **4. What questions can the employer ask?**

Finally, it is important that employers collect exactly the information that the government requires to be collected, to write that information down and keep those records, and not to ask for any additional information. The specific information required depends on the particular circumstances. For more information about this, employers should visit the following site and scroll down to questions 44, 45, and 46: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>. Employers need to follow these specific guidelines for documenting requests for paid leave, and they need to retain this information in separate confidential medical files.