

MPCC Roundtable
July 21, 2020 TPO Update



For questions or additional information regarding the below update, please contact Michaelle Stanford, PHR-ca, M.A. at michaelles@tpohr.com. **TPO Note:** *As a reminder, these updates are provided for informational purposes only. For unique situations to your business, please consult with your Human Resource provider or employment expert.*

With no end to COVID-19 and as the end of Summer approaches, what should businesses be thinking about?

During Governor Newsom's press announcement on Monday, he shared new rules on when schools will be forced to close back down. If classrooms, schools or the entire district must close, employees who have children under the age of 18 may be eligible under Families First Corona Virus Act (FFCRA) for the following benefits: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

Generally, the Act provides that covered employers must provide to **all employees**:^[2]

- 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**:^[3]

- 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.

Covered Employers: The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees.^[4] Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

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 childcare 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 childcare provider is unavailable) for reasons related to COVID-19.

Is there a resource to help employees and employers determine eligibility?

The Department of Labor has published a tool for employees to help them quickly walk through a handful of options to determine their eligibility as an employee.

<https://www.dol.gov/agencies/whd/ffcra/benefits-eligibility-webtool>

Employers? Stand by. The tool is coming.