



## **Heffernan Insurance Brokers answers employers' most common employee benefit/staffing concerns regarding the legislative response to the COVID-19 crisis.**

### **1. When is the Families First Coronavirus Response Act effective?**

- a. April 1

### **2. Who Has to Comply with the Families First Coronavirus Response Act?**

#### **a. Size of the Employer**

- i. Employers that have fewer than 500 employees at the time your employee's leave is to be taken
- ii. Includes full-time and part-time employees within the United States
- iii. include employees on leave; temporary employees who are jointly employed by you and another employer and day laborers supplied by a temporary agency

#### **b. What are the exceptions?**

- i. Employers with fewer than 50 employees may be eligible for an exemption from the requirements to provide leave to care for a child whose school is closed, or because child care is unavailable in cases, if viability of their business is threatened.
  - 1. Businesses that are requesting an exemption will need to document why they need an exception and how the viability of the business is threatened



ii. Essential Industries/Employees able to Telecommute

1. If you are able to telework or perform work while you are at a home location other than your normal workplace, normal wages must be paid and is not compensated under FFCRA
2. The Department of Labor is now explicitly authorized to issue regulations which, among other things: (1) exclude health care workers and emergency responders from eligibility for emergency paid sick time, and

c. Which employees are eligible for benefits?

- i. Employees that have been employed by the employer at least 30 calendar days
- ii. Employed immediate prior to the day the leave would begin.

**3. Under the uses of Emergency Paid Sick Leave is “Shelter in place” and “Stay at home order” the same as “Federal, State Local quarantine or isolation order”?**

- a. It does appear these are the same. Someone unable to report to work because of a stay at home order, who is able to perform their duties via telecommuting would not be able to collect benefits under these laws as I understand them. This understanding may change in further guidance and implementation direction.

**4. What is provided under the Emergency Paid Sick Leave/Family Leave Expansion?**



**a. What situations are covered under Emergency Paid Sick Leave?**

- i. An employee who is unable to work because of coronavirus quarantine or self-quarantine or has coronavirus symptoms and is seeking a medical diagnosis
- ii. An employee who is caring for someone with coronavirus, or is caring for a child because the child's school or child care facility is closed, or for whom the child care provider is unavailable due to the coronavirus

**b. What situations are covered under the Family Leave Expansion?**

- i. In addition to the sick leave credit, for an employee who is unable to work because of a need to care for a child whose school or child care facility is closed or whose child care provider is unavailable due to the coronavirus

**c. Who pays for the leave?**

- i. This is employer paid. A tax credit is available for employers in the amount the pay out under the law.

**d. How much is covered/What are the benefits?**

- i. 10 days of paid sick leave is available to employees who need leave for their own symptoms, or their own state or health care provider ordered quarantine. This is paid up to \$511 per day, max of \$5,110 for the full duration.
- ii. 10 days of paid sick leave is also available to employees who need to care for a child who is home because their school/daycare is closed, or because they are under self-directed quarantine. This is paid at 2/3



salary, to a max \$200 per day, to a maximum of \$2,000 for the 10 day/2 week period.

- iii. The remaining 10 weeks is for employees who need to care for children home from school because the school/daycare is closed for COVID-19 concerns. This remaining leave is paid at 2/3 salary to a maximum of \$200 per day/\$10,000 for the 10 weeks.

**e. When does the leave start/end?**

- i. The leave is effective April 1, 2020 through December 31, 2020
- ii. Sick Leave for employees with symptoms or ordered quarantine:
  - 1. An employee may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period)
- iii. Sick Leave for employees to care for a child who is home because their school/daycare is closed
  - 1. An employee may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period)
- iv. Extended Family Leave for employees to care for children home from school
  - 1. After the first ten workdays have elapsed, (may be covered by the Sick Leave above), you will receive up to 10 weeks.





2. Please note that you can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act for leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

**f. Does it need to be consecutive?**

- i. No, if your employer allows it and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, you and your employer may agree that you may take paid sick leave intermittently while teleworking. Similarly, if you are prevented from teleworking your normal schedule of hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you and your employer may agree that you can take expanded family medical leave intermittently while teleworking.
- ii. You may take intermittent leave in any increment, provided that you and your employer agree.

**g. What tax credits are given to the employer?**

- i. Paid Sick Leave Credit for an employee unable to work because of coronavirus quarantine or has coronavirus symptoms and is seeking treatment
  1. Eligible employers may receive a refundable sick leave credit for sick leave at the employee's regular rate of pay, up to \$511 per day and \$5,110 in the aggregate, for a total of 10 days.



- ii. Paid Sick Leave Credit for an employee who is caring for someone with coronavirus, or is caring for a child because the child's school or child care facility is closed
  - 1. Eligible employers may claim a credit for two-thirds of the employee's regular rate of pay, up to \$200 per day and \$2,000 in the aggregate, for up to 10 days.
- iii. Child Care Leave Credit
  - 1. Eligible employers may receive a refundable child care leave credit equal to two-thirds of the employee's regular pay, capped at \$200 per day or \$10,000 in the aggregate.
  - 2. Up to 10 weeks of qualifying leave can be counted towards the child care leave credit.
- iv. Eligible employers are entitled to an additional tax credit based on costs to maintain health insurance coverage for the eligible employee during the leave period.

#### **h. How do the tax credits get applied?**

- i. When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns (Form 941 series) with the IRS.
- ii. Eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of



qualifying sick and child care leave that they paid, rather than deposit that amount with the IRS.

1. The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.
- iii. If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers may file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less.
- i. How does this coordinate with other benefits? STD? SDI?**
  - i. FFCRA Sick leave comes before, and in addition to any existing leave entitlement. Once the 10 days of paid sick leave are exhausted, if the underlying need for time off remains, this additional time off would be payable under existing STD, SDI, PFL as applicable.
- j. What documentation can the employer request to verify that the leave request is valid?**
  - i. The DOL explains that employees must support leave requests with appropriate information, including the employee's name, qualifying reason for leave, a statement that the employee is unable to work or telework for that reason, and leave date(s).
  - ii. Employees must provide documentation supporting the absence, *e.g.*, a copy of the quarantine or isolation order, or written documentation from a health care provider advising self-quarantine. For employees using



leave to care for a child, examples of supporting documentation include a notice posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider.

- iii. The DOL recommends that employers keep this documentation if they will seek tax credits for providing paid leave. The DOL points employers to consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the process they will need to follow to claim this tax credit, including any necessary supporting documentation.

## **5. Furloughs/Temporary Layoffs**

### **a. Will carriers allow employees to remain on the plan as active work employees?**

- i. Check with your carrier
- ii. If an employer wishes to keep employees actively enrolled in benefits, some carriers will allow an exception to the actively at work provision for situations where an employee is placed on leave, or even when they are laid off temporarily.
- iii. If the contract does not already contain this language, a call to the carrier is required to check on their willingness to extend coverage to employees who will not be actively at work for a period of time. This period may be a week, or up to 60 days.
- iv. If the carrier allows this exception, having it in writing is best.
- v. Keep in mind full premium will be due for this period. The current employer employee share may remain in place, but given employees may not have not been receiving wages, employers may consider paying the full premium for this period.





**b. How does the FFCRA apply if I'm laying off employees?**

- i. No. If, prior to the FFCRA's effective date, 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 insurance benefits.
- ii. This is true whether your employer closes your worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive.
- iii. If the business ceases to exist entirely, COBRA generally cannot apply as there is no underlying plan to attach COBRA rights. But as long as 1 employee remains on payroll, COBRA will continue

**c. If I furlough an employee, can I pay for their benefits and then deduct their portion from their pay at a later date?**

- i. Only if an employee agrees to this arrangement beforehand. An employer is permitted to pay the full premium during furlough, but their ability to then deduct employee share at a later date depends on an employee's agreement.

**d. Can I get an extension on my payment from my carrier?**

- i. There may be some additional grace periods offered by the carrier, but this would vary from area to area and from carrier to carrier. Please check with your carrier specifically for each line of coverage

**e. If an employee's hours are reduced below the plans actively at work guidelines will the carrier allow the employee to remain on the plan?**



- i. Generally yes, many carriers are allowing employees with reduced hours to remain on the plan, but please check specifically with each carrier and try to get the response in writing.

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