

Prepared by:

AAG, Inc

Updated 3/25

Families First Coronavirus Response Act (FFCRA)

Summary of Employers Paid Leave Obligations

- President signed into law on March 18, 2020, takes effect 4/1/2020
- Act contains provisions not applicable to workplace, such as prohibition on insurance plans charging for COVID-19 testing.
- This information is only a summary of the two paid leave acts that apply to you.

Who does this cover and when?

- Private employers with fewer than 500 employees (some government employers included)
- As of now, those with less than 50 employees are covered.
- Takes effect April 1, 2020.
- Expires December 31, 2020

How to calculate if you fall under the 500 threshold?

- You will calculate **each time** leave is to be taken as companies will dip above and below the 500-line.
- Scenario - Johnny seeks leave on a Monday when the Company has 505 employees (he's out of luck), but one week later, Susie requests leave at a time when the Company dips to 499 employees (she's in luck).

What employees do I count?

- Full-time and part-time employees (no independent contractors are counted)
- Only those employees within the United States (as the FMLA does not apply outside the United States and its territories)
- Employees on leave
- Temporary employees who are jointly employed by the employer and another company (regardless of whether the jointly-employed employees are maintained on only one employer's payroll)
- Day laborers supplied by a temporary agency (regardless of whether the employer or the temporary agency or the client firm if there is a continuing employment relationship).

What is regular rate of pay?

- Under FFCRA, the regular rate of pay used to calculate leave is the average of the regular rate over a period of up to six months prior to the date on which you take leave.
- If an ee has not worked for you for six months, the regular rate used to calculate paid leave is the average regular rate of pay for each week worked.
- An ee paid with commissions, tips, or piece rates, these wages will be incorporated into the above calculation.
- You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

Leave Given Prior to April 1 effective date

- Benefits are effective beginning on the April 1st. As a result, any paid leave provided before April 1 will not count towards the new requirements.
- Leave prior to the effective date will not be eligible for the tax credits available under the law.

What If I've already given leave under FFCRA, can I deny requests after 4/1/20?

- No, Any paid leave you provided prior to enactment of the law will be in addition to leave available after April 1st.

What do we have to provide?

- Leave 1 - Up to 80 hours (pro-rated for part-time) of paid sick leave. Available for immediate use, regardless of length of employment.
- Leave 2 - Up to 12 weeks of expanded FMLA Leave (after 30 days of employment)

Leave 1 – Emergency Paid Sick Leave

How do employees qualify for Paid Sick Leave?

- 100% of pay, capped at \$511
 - Experiencing symptoms of COVID-19 and seeking medical diagnosis
 - Subject to government quarantine or told to by health care provider to self-quarantine/isolate

How do employees qualify for Paid Sick Leave?

- 2/3 of the employee pay, capped at \$200 per day
 - Assisting someone who must quarantine or self-quarantine under doctors orders
 - Caring for a son or daughter if school/child care provider is unavailable due to COVID-19
 - Experiencing any other substantially similar condition specified by Secretary of Health and Human Services

Additional Provisions

- Employers may not require an employee taking paid sick leave to find a replacement for him or her;
- All employees are eligible for paid sick leave, regardless of their length of service with the employer;
- Paid sick leave under the Act is not available for absences due to reasons not described above, such as absences occasioned by the employee's generalized concerns about being out in public;
- Paid sick leave under the Act is in addition to any other paid time off benefits already given to employees. Employers may not require an employee to use other available paid leave before utilizing paid sick leave under the Act.

Leave 2 – Family and Medical Leave due to Coronavirus-Related Child Care

Expanded FMLA

- Currently applies to groups of less than 50, not normally covered by FMLA
- Up to 12 weeks of job protected leave to care for the employee's son or daughter under the age of 18, if child's school/child care provider is unavailable due to COVID-19 and ee is unable to work or telework.

How much are we to pay?

- This leave can be unpaid during the first 10 days, because child care for the first 10 days (80 hours) is covered under the Paid Sick Leave (leave 1).
- The following 10 weeks paid at $\frac{2}{3}$ salary. Capped at \$200 per day or \$10,000 aggregate.

What employees are eligible?

- Any employees after 30 days of employment
- Businesses with fewer than 50 employees may qualify for exemption from this requirement, if the leave would jeopardize the viability of the business. (waiting on guidance)

Key Points

- Covered employers must post a notice to employees about their rights under this act (paid sick leave) once DOL prepares it (expected 3/25/20)
- Legislation will expire December 31, 2020, no carry over
- Will become effective on April 1, 2020

Key Points

- You cannot force employees to use other forms of leave concurrently with the new leave
- You may not change paid leave policies once the legislation is enacted

Tax Credits

- Covered business qualify for dollar for dollar reimbursement through tax credits for all wages paid under FFCRA.
- Qualifying wages are those paid to an employees who takes leave for a qualifying reason, up to the per diem and aggregate payment caps. Credits also extend for health coverage maintained.

For Purposes of Computing the amount of credit

- First two weeks (Qualified Sick Leave Wages Paid). The credit depends on whether the ee is sick, caring for a family member or providing childcare to the ee's child.
 - Sick Employee – the credit is the lesser of the daily wage or \$511 per day, per employee for 10 days
 - Providing Care/Childcare – Credit is the lesser of the daily wage or \$200 per day, per employee for 10 days

For Purposes of Computing the amount of credit

- Expanded FMLA – Next 10 weeks
 - Credit is the lesser of the daily wage or \$200 per employee, per day, credit capped at \$10,000 per employee for a given calendar quarter

Questions?

- Please call with questions.
- We are awaiting guidelines from the Secretary of Labor and will keep you posted as those arrive.