

COVID-19 and Your Employees

Impacts on **Leave** and **Benefits**

CASBO 2020

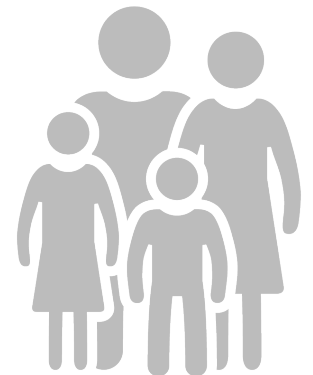
But first...

American Fidelity Administrative Services, LLC does not provide tax or legal advice. While we're happy to provide you with this general information, given the complexity of these rules, we encourage you to contact your tax or legal counsel about how the requirements apply to your specific plans or situation.

Families First Coronavirus Response Act

The Families First Coronavirus Response Act (“FFCRA,” or “Act”):

- Requires public agencies of any size, and private employers with fewer than 500 employees to offer two weeks of paid leave to employees (Emergency Paid Sick Leave Act),
- Offers 12 weeks of leave (10 paid) to employees whose children’s schools or childcare providers have closed (Emergency Family and Medical Leave Expansion Act),
- Increases funding for food assistance programs,
- Expands unemployment insurance, and
- Guarantees free coronavirus testing even for the uninsured.



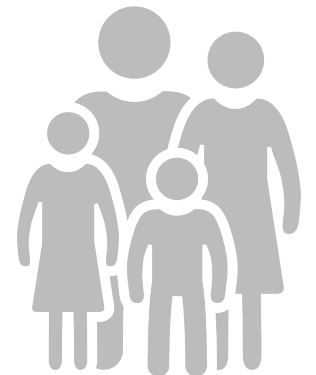
Covered Employers

- ALL state, local and school employers are covered by the FFCRA.
- In the private sector, only employers with fewer than 500 employees are subject to the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.
- Employers can exclude employees who are health care providers or emergency responders, subject to Department of Labor guidance.
- The DOL also stated it will extend an exemption to small businesses under 50 employees if the requirements jeopardize the viability of the business.



Families First Coronavirus Response Act

The Families First Coronavirus Response Act takes effect April 1, 2020 and expires on December 31, 2020. It is not retroactive.



Emergency Paid Sick Leave

Two types of emergency paid sick leave included in the Emergency Paid Sick Leave Act:

- Your employee's own illness or quarantine, and
- Employee is caring for another person who is sick or in quarantine, or a child whose school or daycare has closed.



Emergency Paid Sick Leave

The law requires employers to offer full-time employees 80 hours of paid leave at the employee's regular rate (capped at \$511 per day and \$5,110 in the aggregate) for the following COVID-19 related reasons:

- Employee is under government quarantine/isolation
- Self-isolating at the direction of a health care provider
- Displaying symptoms and seeking a diagnosis



Emergency Paid Sick Leave

The law also requires employers to offer full-time employees 80 hours of paid leave at two-thirds of the employee's regular rate (capped at \$200 per day and \$2,000 in the aggregate) for the following COVID-19 related reasons:

- To care for an individual who is subject to quarantine or isolation, or
- to care for a child whose school or care is closed or unavailable due to COVID-19 precautions.

The law also specifies employees can be eligible if they are “experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.”

Emergency Paid Sick Leave

Part-time employees are entitled to pro-rated leave based on the average hours they would normally have worked in a two-week period.

Calculating hours for part-time and variable-hour employees:

- If schedule is certain, use the hours the employee is normally scheduled to work
- If the normal hours scheduled are unknown, or if the employee's schedule varies, use a six-month average to calculate the average daily hours the preceding six months, or
- If the employee did not work during that period, use the reasonable expectation of the employee at the time they were hired for the average number of hours per day they would normally have been scheduled to work.

Emergency Paid Sick Leave

Employees can be eligible for emergency paid sick leave no matter how long they have been employed – i.e. on day one.

Employees are ***not*** required to have been employed for 30 days to be eligible for emergency paid sick leave.



Expanded FMLA for School Closures

This provision of the law – the Emergency Family and Medical Leave Expansion Act – temporarily expands the FMLA.

- Provides paid, job-protected leave for employees who are unable to work (must also be unable to telecommute)
- Available to care for a child under the age of 18 whose school has closed, or whose child care provider is unavailable for reasons related to COVID-19.



Expanded FMLA for School Closures

The first ten days of this leave may be unpaid.

Employees can use

- accrued vacation,
- personal sick days or
- Emergency Paid Sick Leave

You cannot require them to do so.

The remainder of their leave must be paid at two-thirds their regular rate (capped at \$200 per day and \$10,000 in total).



Expanded FMLA for School Closures

30-day employment requirement

Existing FMLA rules: must have worked for their employer for at least 12 months total and 1,250 hours during the past 12 months.



Expanded FMLA for School Closures

Only permissible reason:

Inability to work (must also be unable to telecommute) due to a need to care for a minor child where the child's school or provider of child care has been closed or is unavailable because of the COVID-19 public health emergency.



Expanded FMLA for School Closures

Total FMLA allotment: 12 weeks

Total number of weeks DOES NOT change.



Expanded FMLA for School Closures

If my employee has used 12 weeks of FMLA-qualifying leave, do I give them another 12 weeks?

No. Your employees continue to have a single 12-week allotment of leave.



Expanded FMLA for School Closures

How does the Act impact our existing FMLA obligations?

The Act provides one additional way to access up to 12 weeks of FMLA protected leave, and requires that employers pay the employee for up to 10 weeks during a school closure.

This Act does not alter the way FMLA works in any other way – all existing rules and regulations remain in effect.



Expanded FMLA for School Closures

First ten days are unpaid.

- Employee may choose to use accrued paid sick time, vacation time, or other paid time off during the 10 unpaid days.
- The employee may also elect to use the paid sick leave provided under the Emergency Paid Sick Leave Act during this initial ten-day period.

Employers cannot require an employee to use existing paid leave before taking leave under the Act.



Expanded FMLA for School Closures

After the first ten days, the employer must provide paid leave.

Eligible employees must be paid not less than two-thirds of an employee's "regular rate of pay" for the number of hours the employee would otherwise be normally scheduled to work during the leave time.

The law limits the amount of required pay for leave to no more than \$200 per day and \$10,000 total.



Expanded FMLA for School Closures

Special rules may apply to Health Care Providers and Emergency Responders.

Employers may choose to exclude employees in these job descriptions from eligibility for the leave provided under the Act.

The DOL “encourages employers to be judicious” when determining whether employees meet the definition of “health care providers” or “emergency responders” under the FFCRA in order “to minimize the spread of the virus associated with COVID-19.”



I'm a public agency; how do I count my employees?

Public agencies, school employers (all schools, public and private), and municipalities do not have to calculate an employee count.

All of these employers are covered by this Act, regardless of size.



How do I know if my private business is required to offer paid leave under this Act?

A private sector employer questioning if it has 499 or fewer employees should calculate head count each time an employee needs to take leave under the Act.

Count all employees within the United States count, even part-time, temporary, seasonal, and employees on a leave of absence.

Seek counsel if parent companies with multiple subsidiaries wish to aggregate related businesses to determine total employee count.

What kind of notice are we required to give employees?

Each covered employer must post a notice of the Families First Coronavirus Response Act (FFCRA) requirements in a conspicuous place on its premises.

An employer may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.

The notice is available at:

<https://www.dol.gov/agencies/whd/posters>

Should I require documentation from employees?

Orally or in writing, employees need to provide:

- Name;
- Date(s) for which leave is requested;
- Qualifying reason for leave; and
- A statement that the employee is unable to work (including unable to telework) because of the qualifying reason
- Name of the government entity that issued the quarantine or isolation order or name of the health care provider who gave advice to self-quarantine

Should I require documentation from employees?

Additionally, for school closure leave, employees need to provide:

- Child's name;
- Name of school, place of care, or child care provider that has closed or become unavailable
- A statement that no other suitable person is available to care for the child during the time the leave is to be taken

Can employees take this leave intermittently?

Yes, if both parties agree and the employee is teleworking.

- May permit intermittent leave in any increment, provided that employee and employer agree.
- DOL encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of voluntary arrangements that combine telework and intermittent leave.

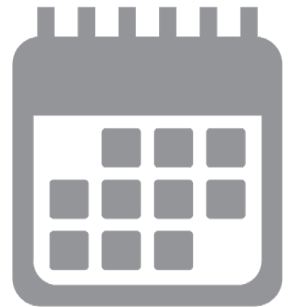
Can non-teleworking employees take this leave intermittently?

It depends.

- If employee is reporting for work at usual worksite and sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, intermittent use of leave is not permitted. Employee must continue to take paid sick leave each day until they either (1) use the full amount of paid sick leave or (2) no longer have a qualifying reason for taking paid sick leave
- If employee needs to care for a child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons, employers and employees can agree to intermittent leave.

I gave employees paid leave before April 1, 2020. Do I get credit for that?

No, Department of Labor guidance clarifies that the new paid leave requirements start on April 1, 2020. Any paid leave provided prior to that date cannot be deducted from available leave provided under the law starting April 1.



Our business shut down. Do we have to provide paid leave?

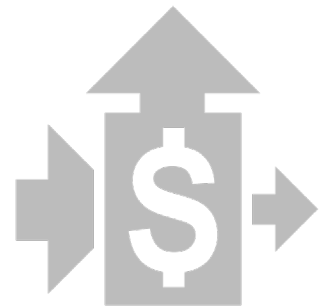
No. If you have closed your worksite or furloughed employees because you do not have work for them to do, they are not eligible for paid leave.

If you reduce your employees' hours, keep in mind that they are still eligible for emergency paid sick leave or school closure leave during the hours they are scheduled to work.

Employees who cannot work due to a closure, furlough, shutdown, or reduction in hours should be encouraged to apply for unemployment insurance.

Medical Plan Design, HDHP

- IRS Notice 2020-15 addresses plan design in response to COVID-19
- Allows High Deductible Health Plans (HDHP) to provide for coronavirus testing and treatment without a deductible (or with deductible below the HDHP deductible)
- Individuals can continue to make HSA contributions even if the plan decides to cover COVID-19 at a reduced cost or before the deductible is met



Medical Plan Design, Testing

- Families First Coronavirus Response Act (H. R. 6201)
- Free coronavirus testing and related diagnostic
 - Waive deductibles and copays
 - No preauthorization or medical management requirements
- Employers with self-funded plans need to:
 - Consider any necessary amendments to plan documents
 - Notify reinsurance carrier
 - Coordinate with third-party administrator



Medical Plan Design, Cost Concerns

Potential cost increases related to coronavirus

- Testing kits, materials
- Office visits, professional services related to diagnosis and treatment
- Quarantines and hospitalization
- Increasing telemedicine for routine conditions

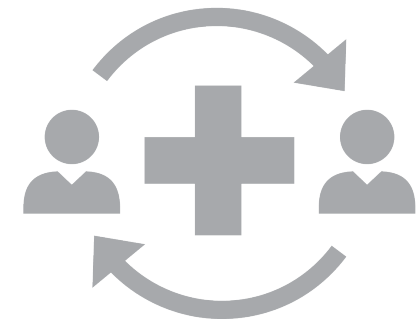
Potential cost decreases

- Postponement of elective surgeries
- Fewer office visits (including drop in routine lab testing)



COBRA

- Continuation of coverage in the event the employee loses health benefits
 - Terminations
 - Change in job status including reduction in hours
- Unpaid, non-FMLA leave may result in a reduction of work hours that could trigger a loss of coverage under the terms of the plan
- What does your plan say about eligibility?



HIPAA

- Keep personal health information (PHI) from becoming public
- Covered Entities may not disclose PHI
 - Generally health care providers, health plans (self-funded plan), health care clearinghouses
 - One permitted disclosure under HIPAA is to public health authorities to the extent relevant to the authority
- Unless an employer is a Covered Entity it is not subject to HIPAA restrictions on disclosures of PHI, however many other privacy considerations continue to apply



ADA, Employer Confidentiality

- Employers that obtain medical information are required to maintain it in a confidential medical file separate from the personnel file
- CDC and EEOC permit employers to question their employees regarding COVID-19 (must treat medical information as confidential)
- If a positive case is identified in the workplace, the employer is encouraged to investigate without disclosing personally identifiable information
- The confidentiality requirements under the ADA do not prohibit disclosure to state, local, or federal health departments

Financial Concerns

- Stock market decline may increase financial stress for employees who were contemplating retirement
- Do's and Don'ts in a down market for employees:
 - Don't panic sell or panic distribute (cash out) retirement savings.
 - Do review your asset allocations. Do your allocations reflect your (retirement) timeline?
- Employers may want to direct inquiries to plan administrator



Questions?

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<https://consulting.americanfidelity.com/education/covid-19/>