

Emergency Family and Medical Leave Expansion Act

The first section of the FFCRA that applies to businesses pertains to an expansion of the U.S. Family and Medical Leave Act. Until the end of 2020, employers with fewer than 500 employees will now be required to provide employees with up to 10 weeks of paid FMLA. The first two weeks of the normal 12-week FMLA leave may be provided unpaid, but an employee may be able to be paid through the paid sick leave provision or other paid leave the employee has available.

Which employees are eligible?

Paid FMLA will be available to any employee who has been employed for at least 30 days and must care for children whose schools have closed due to the coronavirus health emergency. The eligible employee must not be able work (or work remotely) while caring for children.

How are employees paid during this time?

First, employers are required to offer employees unpaid leave (or accrued paid leave or paid vacation) for 10 days. After this, paid leave kicks in and employees are compensated at two-thirds of their regular rate. Paid leave cannot exceed \$200 per day and \$10,000 total for the full 10 weeks.

Are there exemptions?

As mentioned above, businesses with fewer than 50 employees may be exempt from all of these requirements if they can prove that providing the leave would risk them going out of business. Other provisions of note include:

- Businesses with fewer than 25 employees are not required to reinstate an employee to their position after they return from leave but all businesses with more than 25 employees must do this.
- Businesses with fewer than 50 employees are exempt from civil actions brought by employees for violations regarding emergency paid FMLA.
- Healthcare and emergency response organizations may exclude employees from paid FMLA expansion due to the coronavirus crisis.

To help employers afford the new paid sick leave and paid FMLA benefits, companies are able to seek reimbursement through tax credits.

Emergency Paid Sick Leave Act

The second leave provision of the FFCRA that affects businesses is emergency paid sick leave. Until the end of 2020, employers with fewer than 500 employees must offer paid sick leave to those who meet criteria associated with the public health emergency.

Which employees are eligible?

The new FFCRA paid sick leave is available to any employee if they are unable to work (in-house or remotely) because they are:

- Subject to federal, state, or local quarantine or isolation related to COVID-19;
- Have been advised by their doctor to self-quarantine due to COVID-19;
- Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- Caring for a family member subject to a quarantine order or self-quarantine;
- Caring for children if schools are closed or their caregiver is unavailable because of the COVID-19 health emergency; or
- Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.

How are employees paid during this time?

Full-time employees can receive up to 80 hours of paid sick leave, while part-time employees can receive pay based on the number of hours they would work during an average two-week period. If an employee qualifies based on the first three reasons above, they receive sick leave at their regular rate with pay capped at \$511 per day and \$5,110 total. If an employee qualifies based on the second three reasons above, they receive sick leave at two-thirds their regular rate of pay with amounts not exceeding \$200 per day and \$2,000 total. The Secretary of Labor is required to issue more guidelines to help employers formulate leave benefits by April 1.

How does this impact sick leave that's already offered?

Emergency paid sick leave is offered in addition to any existing sick leave and/or paid time off that is already offered by an employer.

Are there exemptions?

- Businesses with fewer than 50 employees may be exempt from all of these provisions if providing the leave could “jeopardize the viability” of your business.
- Healthcare and emergency response organizations may exclude employees from paid FMLA expansion due to the coronavirus crisis.

Tax Credits for Paid Sick Leave and Paid FMLA

To help employers afford the new paid sick leave and paid FMLA benefits, companies are able to seek reimbursement through tax credits.

Each quarter, private companies are entitled to fully refundable tax credits for both paid sick leave and paid FMLA. The tax credits are applied against an employer's already-owed Social Security taxes. However, if that offset is not enough to cover these payouts to employees, then the Treasury Department is authorized to help cover the rest with cash payouts. In addition, the Treasury is directed to issue regulations to waive penalties for businesses not submitting their payroll taxes if they do so in anticipation of a refund under the new law. In addition, the Treasury Department has [said](#) they will soon be releasing a form for small businesses to request an expedited advance on their refund.

Additionally, an employer's tax credit is increased by the amount the employer pays to maintain health care related to new sick leave and FMLA benefits. This will allow a company to maintain health care benefits while the employee is on leave.

Emergency Unemployment Insurance Stabilization and Access Act of 2020

Finally, the FFCRA also allocates \$1 billion in funds for state unemployment programs and gives state governments new flexibility when it comes to workers needing unemployment insurance. The FFCRA eliminates the need for employees to wait a week before they are eligible for UI and eases work search requirements, meaning employees will be able to apply for unemployment insurance more quickly. The law also provides more money to states to fund their UI programs.

These new rules may inform how businesses make decisions about their employees, especially those companies considering layoffs or staff changes in light of the coronavirus crisis.