Families First Coronavirus Response Act (FFCRA) Leave

FMLA Expansion (FMLAE)



Do you Have fewer than 500 Employees or are you a governmental employer?



At the time leave will begin, has the employee been on your payroll for at least 30 days?*



Is the employee unable to work or telework due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency (i.e., COVID-19)?



Public Health Emergency Leave does not apply. See Emergency Paid Sick Leave on page 2 to determine if other FFCRA leave may apply.



FFCRA does not apply



The employee is not eligible for Public Health Emergency Leave.



Public Health Emergency Leave applies. ** The employee is entitled to up to 12 weeks of job-protected*** leave beginning on or after April 1, 2020. Note that if your organization was subject to FMLA prior to April 1, 2020, the employee's Public Health Emergency Leave entitlement depends on how much leave the employee has already taken during the 12-month measurement period that you use for FMLA leave. The employee may take a total of 12 workweeks for FMLA or Public Health Emergency Leave reasons during a 12-month period.

After the first 10 days of leave, you must continue paid Public Health Emergency Leave for up to 12 weeks at a rate of no less than two-thirds of the employee's usual rate of pay. The FFCRA limits the amount of required Public Health Emergency Leave to no more than \$200 per day and \$10,000 in total.



First 10 days may be unpaid. Employee may use FFCRA Emergency Paid Sick Leave. The employee may substitute Emergency Paid Sick Leave or accrued PTO, vacation, or sick time, in any order, but you may not require the employee to do so.



- ** Health care providers and emergency responders may be excluded by their employers from being able to take Public Health Emergency Leave under the FFCRA.

 *** You may refuse to return an employee to his or her position if: The individual is a highly compensated "key" employee as defined under the FMLA, or if you have fewer than 25 employees, and the employee took leave to care for their own son or daughter whose school or place of care was closed, or whose child care provider was unavailable, and all four of the following hardship conditions exist:
- (1) the position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of the leave:
- (2) you made reasonable efforts to restore the employee to the same or an equivalent position;
- (3) you make reasonable efforts to contact the employee if an equivalent position becomes available: and
- (4) you continue to make reasonable efforts to contact the employee for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after the leave began, whichever is earlier.



Families First Coronavirus Response Act (FFCRA) Leave

Emergency Paid Sick Leave

Do you Have fewer than 500 Employees or are you a govermental employer?



Is the employee unable to work or telework due to one of the following reasons?

- 1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19: or
- 3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis?

Is the employee unable to work or telework due to one of the following reasons?

- a. The employee is caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- b. The employee is caring for a son or daughter whose school or place of care has been closed, or the child care provider is unavailable due to COVID-19 or
- c.The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services?



Emergency
Paid Sick
Leave does
NOT apply

* Emergency Paid Sick Leave applies in

addition to any other employer-paid time off. The employee may choose to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave, up to the employee's normal earnings. However, you are not required to permit an employee to use existing paid leave to supplement the amount your employee receives from paid sick leave or expanded family and medical leave. An employee who was laid off any time after March 1, 2020, will be eligible for Paid Emergency Sick Leave if he or she is then rehired by you. Health care providers and

emergency responders may be excluded by

Emergency Paid Sick Leave under the FFCRA.

their employers from being able to take



FFCRA does not apply

YES

Emergency Paid Sick Leave applies.*

When Emergency Paid Sick Leave is for reasons (1), (2), or (3) above, the employee is entitled to 100% of regular rate of pay (capped at \$511 per day/\$5,110 aggregate) for up to 80 hours (prorated for part-time employees).



Emergency Paid Sick Leave applies.*

When Emergency Paid Sick Leave is for reasons (a), (b), or (c) above, the employee is entitled to 66.67% of regular rate of pay (capped at \$200 per day/\$2,000 aggregate) for up to 80 hours (prorated for part-time employees).

Families First Coronavirus Response Act (FFCRA) Leave

Family and Medical Leave Act Leave & COVID-19



Are you a public agency, a public or private elementary or secondary school, or an employer with 50 or more employees?



Has the employee been employed for at least 12 months and worked at least 1250 hours in the past 12 months?



Does the employee work at a location with 50 or more employees within 75 mile radius?



Has the employee been diagnosed with COVID-19?



Does the employee need time off to care for a spouse, son, or daughter who is unable to work, attend school or perform other regular daily activities due to a diagnosis of COVID-19. treatment therefore, or recovery therefrom?



FMLA is unlikely to apply based upon COVID-19.



FMLA does NOT apply



FMLA does NOT apply



FMLA does NOT apply





Has the employee been hospitalized for COVID-19 or related complications?



FMLA Applies*

*It is assumed that any employee or family member who is diagnosed with COVID-19 and either hospitalized or under continuing care will be

incapacitated for more than 3 days.

Note that the employee's entitlement to leave remains dependent upon how many workweeks the employee has already taken of FMLA leave during the applicable 12-month period.



FMLA is unlikely to apply based upon COVID-19.



Is the employee under continuing care (i.e., has the employee visited a doctor AND received prescription treatment OR has the employee visited a doctor two or more times) because of COVID-19?



FMLA Applies*

The intent of this analysis is to provide general information regarding the provisions of current federal laws and regulation. It does not necessarily fully address all your organization's specific issues. It should not be construed as, nor is it intended to provide, legal advice. Your organization's general counsel or an attorney who specializes in this practice area should address questions regarding specific issues.