

# Successfully Navigating the New Families First Coronavirus Response Act (FFCRA): A How-To Guide

## Basics:

- Effective Dates: April 1, 2020 – December 31, 2020
- Applies to all employers with fewer than 500 employees; for information about possible “exemptions” from the FFCRA, see “Other Elements” section below.
- Provides “wage replacement” for employees with wages lost due to an inability to work because of a qualifying COVID-19 reason
- Wage replacement is paid in the form of Sick Leave and/or Expanded Family and Medical Leave
- Sick leave:
  - Amount of paid sick leave available is up to 80 hours\* in total through December 31, 2020
  - Can be used intermittently in limited situations, but is not required
  - Once exhausted, no additional sick leave time is available under the FFCRA
- Expanded Family and Medical leave (EFMLA):
  - Amount of paid expanded family and medical leave available is up to 12 weeks\* in total through December 31, 2020 (first 2 weeks unpaid, 10 weeks paid)
  - Can be used intermittently, but is not required
  - Once exhausted, no additional EFMLA time is available under the FFCRA
- Qualifying wage replacement money paid is reimbursed 100% through a deduction from the employer’s normal periodic federal tax deposits
- The most common reason for FFCRA leave is employees who cannot work due to their child’s school, daycare, or childcare being closed or unavailable by state or local mandate
- Once any and all leave is exhausted, the employee is expected to return to work.

\* Leave time is based on an employee working 40 hours per week. If an employee averages less than 40 hours per week, then leave time is prorated. For example, if an employee averages 30 hours per week, then eligible sick leave is 60 total hours and eligible family leave is based on 30 hours per week for the 12 weeks.

## Step 1: Eligibility

- For sick leave: any employee who loses wages due to one of the qualifying reasons listed below
- For expanded family and medical leave: any employee who loses wages due to qualifying reason #5 below **and** has been employed at least 30 days
- Qualifying 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.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to either number 1 or 2 above.
5. The employee is caring for his or her child if the school or place of care of the child has been closed, or the child care provider of such child is unavailable, due to COVID-19 precautions.
6. The employee is 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.

## **Step 2: Leave Request Form**

Any employee requesting FFCRA must complete an FFCRA Leave Request form. If the employee has supporting documentation of the need to take leave, this may be provided as well, but may not be required as part of taking leave.

You will find a FFCRA Leave Request form at the end of this document.

The “Requested Leave Start Date” will be the first day of work the employee will miss due to the qualifying reason(s). If the employee has been on furlough/layoff status, then the recalled/reinstated date will be the Start Date for the leave.

If the End Date is unknown, due to unknowns about the school, daycare, or childcare closure, put the maximum date possible, which would be 12 weeks from the Start Date if the employee has not already used their FFCRA Sick Leave.

The Days and Hours table is based on the days and hours that the employee would have worked if they had been available and/or the average days and hours the employee worked prior to being furloughed or laid off.

Carefully review the allowable types in your policy, and see the IRS information below.

## **Step 3: Paying the Appropriate Amount**

FFCRA paid sick leave and paid expanded family and medical leave should be itemized on an employee’s paycheck in a similar manner as overtime, PTO, insurance and vacation. *Do not process these benefits in such a way that they appear as regular wages.*

Check with your payroll processor; they may have already created categories for these two leaves. If not, process these as "Other Pay" or "Special Pay" or something similar. Avoid confusion by processing FFCRA Paid Leave grouped together with other leave benefits.

Refer to your applicable FFCRA policy for information about: 1) the rate of pay, 2) the daily maximums, and 3) the total maximums, for the respective leaves.

Health insurance benefits (if provided) are to continue while an employee is on FFCRA leave. If the employee has health insurance deductions or other normal payroll deductions, these will also continue while the employee is paid on FFCRA leave. If the payroll amounts are not adequate for covering the employee's insurance obligations, have a conversation with the employee and potentially your insurance carrier to determine what options are available for other payment methods.

#### **Step 4: Transition off FFCRA Leave**

Ideally, the employee will return to work on or before the end of their maximum available FFCRA sick leave or family leave. The return would be to the employee's pre-leave: 1) position, 2) rate of pay, and 3) number of hours. You are not allowed to adversely affect the employee by reducing their wages or their work hours because they took FFCRA Leave.

It is recommended that while on leave and prior to returning from FFCRA Leave, that you communicate with the employee: checking in, learning about any concerns or changes, reiterating when FFCRA leave will end and that the employee is expected to return to work.

Once the COVID-19 qualifying reason is eliminated or when an employee exhausts all eligible FFCRA leave, the employee is expected to return to work.

If the employee is unable or unwilling to return, you can, at your discretion:

- a) transition the employee to furloughed/laid off,
- b) put the employee on an unpaid leave of absence, or
- c) follow through with a voluntary resignation.

#### **Example 1:**

Mary has been on furlough/layoff status from her 32 hour per week position where she was making \$24 per hour. It is now reinstatement time.

Mary indicates that her child's school is closed, along with all daycare and childcare facilities in her area (FFCRA qualifying reason #5).

Mary completes the FFCRA leave request form and any accompanying documents that she may have. Since Mary's reinstatement date is June 1, 2020, then her first day of her FFCRA leave is June 1, 2020.

Beginning June 1, 2020, Mary is eligible to begin 32 hours per week of FFCRA sick leave for two weeks, if she elects this. FFCRA sick leave wage replacement, for qualifying reason #5, is equal to 2/3 of Mary's normal wages, capped at \$200 per day.

Mary also begins FFCRA Expanded Family and Medical leave on June 1<sup>st</sup>. This runs concurrently with Mary's FFCRA sick leave, taking into account that the first two weeks of FFCRA expanded family and medical leave are unpaid.

If Mary's qualifying reason has not resolved itself by the end of her eligible FFCRA sick leave, then Mary will begin receiving wage replacement through FFCRA family leave for up to 10 weeks. FFCRA family leave wage replacement is equal to 2/3 of Mary's normal wages, capped at \$200 per day.

Recapping:

- During weeks 1-2, Mary will receive 32 hours x \$16 per hour each week (2/3 of \$24 = \$16), for a weekly total of \$512, \$1,024 for the 2 weeks.
- During weeks 3-10, Mary will receive 32 hours x \$16 per hour each week (2/3 of \$24 = \$16), for a weekly total of \$512, \$5,120 for the 10 weeks.

## **Example 2:**

Sharon was reinstated May 1, 2020 and had worked for the office for a few years prior to the pandemic. Her normal schedule is 36 hours per week, and she is paid \$21 per hour. On May 11th she was diagnosed with COVID-19 and told to self-quarantine by her healthcare provider for 14 days.

Sharon completed an FFCRA Leave Request Form and her first day of FFCRA sick leave was May 11, 2020. She remained on FFCRA sick leave for 2 weeks. FFCRA sick leave wage replacement, for qualifying reason #2, is equal to Mary's normal wages, capped at \$511 per day. After the 2 weeks, she was healed and returned to work.

On September 5th 2020, Sharon learned that her child's school will be closed for the rest of the school year beginning September 14th, and she does not have any daycare or childcare options.

She completes another FFCRA Leave Request Form, this time for the FFCRA family leave benefit. Since Sharon already used her FFCRA sick leave earlier in the year, it is not available at this time.

Sharon goes on FFCRA family leave beginning September 14th. The first 2 weeks are unpaid. After the initial 2 weeks, the next 10 weeks will be paid at 2/3 of Sharon's normal wages, capped at \$200 per day.

Recapping:

- During the sick leave period in May, Sharon will receive 36 hours x \$21 per hour each week for 2 weeks, for a total of \$1,512 for the 2 weeks.
- During the family leave period in September, Sharon will receive 36 hours x \$14 per hour each week (2/3 of \$21 = \$14), for 10 weeks (since the first 2 weeks are unpaid) for a weekly total of \$504, and \$5,040 for the 10 weeks.

## **Other Elements:**

### **Poster:**

If you haven't already, you need to post the required DOL FFCRA poster. Here is the link:  
[https://www.dol.gov/sites/dolgov/files/WHd/posters/FFCRA\\_Postor\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHd/posters/FFCRA_Postor_WH1422_Non-Federal.pdf)

### **Tax Credits:**

In order to claim the tax credits, you need to have proper documentation and follow the IRS guidelines. Here is more information:

<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

### **DOL FAQ Page:**

For detailed information, especially information about specific and unusual circumstances, check out the DOL FAQ page on FFCRA leave:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

### **Exemption from the FFCRA:**

1. The exemption is not automatic.
2. The exemption, if applicable, only applies to employers with fewer than 50 employees.
3. While there is a potential for exemption for certain "healthcare providers", this does not include dental practices, dentists or hygienists.
4. The exemption is not "across the board" for the business. It is applied individually per employee, on a case-by-case basis.
5. The FFCRA is valid through December 31, 2020. While you might be able to claim exemption now, for a given employee, that may not be the case later this year.
6. The exemption only applies to Qualifying Reason #5 (school, childcare, or daycare closure).
7. An exemption may exist if:

- a) The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
  - b) The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
  - c) There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.
8. Claiming exemption can cause liability if you get it wrong. An employee can file a claim against you and challenge your assertion. The Department of Labor has been clear that the burden of proof will be on the employer.
9. If you decide to move forward with exemption, you should carefully and thoroughly document why your business meets the criteria set forth and keep it for at least **four** years. ***You do not send any materials to the Department of Labor.***