

## Paid Sick Days and Paid Leave Provisions in FFCRA and CARES Act

The COVID-19 pandemic is having devastating implications on workers earning low wages and their families. Failing to ensure all working people have adequate benefits, including access to paid sick days and paid family and medical leave, was already having significant economic and public health consequences—even before this crisis. Low-wage workers—who can least afford to take unpaid leave—are also the least likely to have access to any paid leave.

On March 18, 2020, Congress passed the *Families First Coronavirus Response Act (FFCRA)*, H.R. 6201, providing some employees up to 10 paid sick days and up to 10 weeks of paid family and medical leave, in addition to other critical measures. This was the first time Congress required federal paid leave for private sector workers—an important first step in ensuring workers earning low wages have access to these benefits during the coronavirus pandemic. Congress must, however, do more to protect all working people during and after this crisis.

On March 27, 2020, Congress passed and the president signed the *Coronavirus Aid, Relief, and Economic Security Act*, H.R. 748, or the CARES Act. This fact sheet addresses the *Families First Coronavirus Response Act's* Emergency Family and Medical Leave Expansion section and Emergency Paid Sick Leave section, as amended by the CARES Act.

### Overview of the Emergency Paid Sick Leave Act

In response to the public health emergency, Congress passed a historic provision requiring paid sick leave for the coronavirus pandemic effective April 1 through December 31, 2020.

#### Paid Sick Leave

- **80 hours of job protected paid sick leave for full time employees**, or roughly 2 weeks.
- Part-time employees are covered, with the number of hours they receive determined by their average hours worked in a two-week period.
- Leave is immediately available but cannot be carried over from one year to the next.
- For employers with existing paid leave policies, the Act's paid sick time is in addition to any existing leave. An employer cannot require employees to use their existing accrued leave time before using this emergency leave. Employers also cannot require their employees to find a replacement worker if they need to take this emergency leave.

\*Note: Employers must continue providing health insurance coverage during this leave period.

#### Wage Replacement

- **Full wage replacement for self-care**, with a maximum required benefit of \$511 a day (\$5,110 total).
- **2/3 wage replacement if employees are caring for another individual or a child** whose school has closed or whose child care provider is unavailable, with a maximum required benefit of \$200 a day (\$2,000 total).

- Wages are defined as the employee’s regular rate of pay, the federal minimum wage, or the state or local minimum wage where they are employed, whichever is greater.

### Uses

Employees are entitled to paid sick time when unable to work (or telework) for any of the following reasons:

- Employee is subject to a government-mandated quarantine or isolation order related to COVID-19;
- Employee’s health provider orders self-isolation due to concerns related to COVID-19;
- Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- Employee is caring for an individual subject to a quarantine/isolation order by the government or a health care provider;
- Employee is caring for a son or daughter whose school or place of care is closed, or whose child care provider is unavailable because of COVID-19; or
- Employee is experiencing any other “substantially similar condition” as specified by the Secretary of Health and Human Services, in consultation with the Secretary of Treasury and the Secretary of Labor.

### Eligibility

- Employees working for private employers with **less than 500 employees**. Therefore, the FFCRA explicitly **excludes** private employers with 500 or more employees.
- Local, state, and federal government employees, except that the Office of Management and Budget has authority to exclude for good cause certain federal Executive Branch employees.
- Employers of **health care providers and emergency responders** can **opt out** of the Act.
- All eligible employees are entitled to emergency paid sick leave, regardless of their immigration status.

### Exemptions

- Allows the U.S. Department of Labor (DOL) to **exempt small businesses with less than 50 employees** from providing leave to care for a child whose school is closed or whose child care provider is unavailable, when doing so would jeopardize the viability of the business as a going concern.
- Allows DOL to issue regulations that **exempt certain health care providers and emergency responders**.

### Discrimination Protections

- Workers are protected from discharge, discipline, or any other retaliation or discrimination for using this leave, filing a complaint, or testifying.

### Guidelines & Enforcement

- The Secretary of Labor must provide guidelines within 15 days of enactment and a model Notice of Rights within 7 days of enactment.
- Employers who violate this Act will be subject to penalties consistent with the Fair Labor Standards Act (FLSA), 29 U.S.C. 216; 217, for failing to pay the minimum wage.
- Employers who willfully violate the discrimination prohibitions will be subject to FLSA penalties for willful violations.

### Interaction with Other Laws

- The Act does not diminish employees’ rights or benefits under any other federal, state, or local law, collective bargaining agreement, or existing employer policy.

## Overview of the Emergency FMLA Expansion Act

The FMLA Expansion Act amends the federal Family and Medical Leave Act (FMLA) by providing up to 12 weeks of paid public health emergency leave from March 18, 2020 until Dec. 21, 2020. The Act is effective 15 days after enactment.

### Can only be used to care for a son or daughter who lacks school or child care because of the pandemic

- Provides leave for employees unable to work (or telework) who need to care for a son or daughter under 18 whose school or place of care is closed or whose child care provider is unavailable because of the public health emergency.

\*Note: Employers must continue providing health insurance coverage during this leave period.

### Employees receive 2/3 of their wages after the first 10 days, with limits

- The **first 10 days of leave may be unpaid** (although employees may be eligible for paid sick leave during this time). Employees can use paid leave they previously accrued during this time. However, employers cannot require employees to use other accrued leave for public health emergencies.
- After 10 days, employees must receive **2/3 of their regular wages for the remaining 10 weeks**.
- Employers are not required to pay more than \$200 a day and \$10,000 total.

### Eligibility

- Employees must be employed **at least 30 days, but do not have to meet other FMLA eligibility requirements** for this limited expansion for COVID-19 public health emergency leave. Employees who had worked for their employer for at least 30 days in the prior two months, were laid off after March 1, 2020, and then re-hired, are also eligible.
- Employees working for private employers with **less than 500 employees**. This Act explicitly **excludes** private employers with 500 or more employees.
- State and local government employees and certain federal government employees, except that the Office of Management and Budget has authority to exclude for good cause certain federal Executive Branch employees.
- Employers of **health care providers and emergency responders** can **opt out** of the Act.
- All eligible employees are entitled to emergency paid family leave, regardless of their immigration status.

### Exemptions

- Allows DOL to exempt **small businesses with less than 50 employees** from providing leave when doing so would jeopardize the viability of the business as a going concern.
- Also allows DOL to issue regulations that **exempt certain health care providers and emergency responders**.

### Job Protection

- Job protection is guaranteed for employees who work for an employer with 25 or more employees—meaning that they cannot lose their jobs by taking this leave.
- If an employer has less than 25 employees, and the position does not exist after the leave because of the public health emergency, the employer must take reasonable efforts to restore the employee to a position equivalent to that held by the employee when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment.

## Enforcement

- Employees who work for employers with less than 50 employees lack a private right of action for violations of the FMLA Expansion Act, which means they cannot sue their employer for violating their rights.

## Who pays for paid sick days and paid leave?

- Employers pay their employees but will be reimbursed by the federal government for wages and the employer's contribution to employee health insurance premiums during both types of leave.
- Employers will be reimbursed through a refundable tax credit that counts against their payroll tax.
- The Treasury Secretary will provide additional instructions for employers to receive an advanced tax credit.
- Employers will submit emergency paid sick leave expenses as part of their estimated quarterly tax payments. If their costs more than offset their tax liability, they will receive a refund from the IRS.
- This provision does not apply to governments.

*Certain **self-employed individuals** are also eligible for a tax credit for emergency paid sick and emergency family leave for days they are unable to perform services in any trade or business.*

## Interactions with Unemployment Insurance

Employees are eligible for emergency paid sick leave and emergency family leave only when their employer has work available for them. Employees may instead be eligible for unemployment insurance (UI) if they have been furloughed, their worksites are closed, they have exhausted their leave or are no longer eligible for emergency paid sick time or paid family leave, or they otherwise are unable to work. If workers' hours were cut due to the crisis, they may be eligible for UI or Pandemic Unemployment Assistance (PUA) or for work sharing—which allows people who are involuntarily working reduced hours to get partial UI benefits—through their state unemployment office.

For additional information on UI eligibility and paid leave, please refer to the Family Values @ Work and National Employment Law Project's (NELP) [COVID-19 Decision Chart](#) and [A Better Balance's Know Your Rights FAQ's](#). And for guidance on how child care providers can access UI, please refer to [Unemployment Compensation: A Guide for Child Care Stakeholders During the Coronavirus Pandemic](#) by CLASP.

### The CARES Act also created three new UI programs:

- Pandemic Unemployment Compensation (PUC) will supply all regular UI and PUA recipients and those receiving work-sharing benefits an **additional \$600 per week** in addition to their regularly calculated UI benefits through the week ending July 26, 2020.
- Pandemic Employment Unemployment Compensation (PEUC) provides **an additional 13 weeks of state UI benefits** to workers.
- Pandemic Unemployment Assistance (PUA) provides unemployment assistance to workers who are not included in or have exhausted regular state UI benefits. PUA provides up to **39 weeks of immediately available UI coverage** through December 31, 2020. Self-employed workers, independent contractors, freelancers, workers seeking part-time work, and workers who don't have a long-enough work history to qualify for state UI benefits may be eligible for PUA.

For more information on the details of these programs, please refer to the [National Employment Law Project's UI Resource Guide](#).

## Limitations and implications of FFCRA carve-outs and other provisions

### Leaves out millions, especially those earning low wages

While these short-term paid sick days and paid family and medical leave provisions are critical and will help many workers, the exclusions and exemptions in this legislation will primarily hurt workers earning low wages, who are predominantly women, people of color, and immigrants. For example, the exclusion of employees working for large employers inexcusably leaves out millions of workers. While some large employers provide paid family leave, it is often provided inequitably, leaving many workers earning low wages without similar benefits. Furthermore, it is truly shortsighted during a public health emergency to allow employers of health care providers and emergency responders to opt out of providing paid sick days and paid family and medical leave—or for the U.S. Department of Labor to be allowed to exempt these workers. Many health care providers and emergency responders are themselves succumbing to the COVID-19 infection or are exhibiting symptoms but may not be allowed to use these important leave provisions to take time for their own health needs. This will potentially force these workers to go to work sick or symptomatic and further spread contagion.

### Wage replacement too low

Providing workers with 2/3 of their wages will make it difficult for many low-wage workers, such as those who only make the minimum wage, from being able to afford to take this leave. No workers should be forced to choose between their economic security and caring for themselves or their loved ones. And, it may inadvertently push workers who are sick or symptomatic back to work when they may be contagious.

### Limits use of emergency paid family and medical leave to child care only

Limiting the use of paid family and medical leave to the care of a son or daughter who lacks school or child care because of the pandemic will hurt millions of workers who will need this longer-term leave to recover from COVID-19 themselves or who are providing critical caregiving to a loved one affected by COVID-19.

**The limitations** of the emergency paid sick days and paid leave provisions in the *Families First Coronavirus Response Act* and CARES Act underscore why we need permanent, national, inclusive, and comprehensive paid sick days and paid family and medical leave programs. Workers must have access to these vital leave provisions whenever they need it, not just for this public health emergency.