

# OVERVIEW: EMERGENCY PAID SICK & EXPANDED FAMILY LEAVE

The Families First Coronavirus Response Act (“FFCRA”) took effect on April 1, 2020, and **applies to leave taken between April 1, 2020, and December 31, 2020**. The Act gives certain employees access to emergency paid leave to either care for themselves or certain individuals, or to care for their children as a result of a school or child care closure or unavailability, due to the COVID-19 crisis. The U.S. Department of Labor (USDOL) will continue to issue [guidance](#) on the law.

**The law requires certain employers to provide workers with two types of paid leave when the employee is unable to work (or telework): sick leave and family leave to care for a child.**

- **Emergency Paid Sick Leave: Up to 80 hours (two weeks) of paid leave** for employees to care for themselves or another individual because they are subject to a COVID-19 quarantine or isolation order (issued by a government or upon advice of a health care provider) or experiencing symptoms of COVID-19 and seeking a medical diagnosis; or to care for a child whose school/child care has closed or whose child care provider is unavailable.
  - **Full-time employees** receive 80 hours of paid leave; **part-time employees** receive the average hours worked in a two-week period.
  - **Full wage replacement for self-care**, with a maximum required benefit of \$511/day (\$5,110 total).
  - **2/3 wage replacement if caring for an individual or a child**, with a maximum required benefit of \$200 per day (\$2,000 total).
- **Emergency Family Leave: Up to 12 weeks of job-protected leave** for employees to care for their “son or daughter,” whose school or place of care is closed or whose child care provider is unavailable due to COVID-19.
  - **The first two weeks are unpaid; the remaining 10 weeks are paid** at 2/3 the employee’s wage, with a maximum required benefit of \$200 a day (\$10,000 total).

**Private employers with less than 500 employees and most public employers are required to provide their employees both forms of leave. However, certain employers may be exempt:**

- **Private employers with 500 or more employees** are excluded from the requirement.
- **Employers of [health care providers and emergency responders](#)** can opt out.
- **[Small businesses with less than 50 employees](#)** may be exempt from providing emergency leave for an employee’s child care needs, when doing so would jeopardize its viability.

Summary of FFCRA Paid Leave Provisions				
Reason for emergency leave:	Emergency Paid Sick Leave (up to 80 hours)	Emergency Family Leave (up to 10 weeks paid)	Wages	Max. pay required/day
To care for oneself due to COVID-19 isolation/quarantine order or experiencing COVID-19 symptoms	Yes	No	Full wages	\$511
To care for an individual due to COVID-19 isolation/quarantine order	Yes	No	2/3 wages	\$200
To care for a son or daughter due to school closure or child care unavailability	Yes	Yes	2/3 wages	\$200

# EMPLOYEE GUIDELINES: EMERGENCY PAID SICK LEAVE

## I. Checking your eligibility for emergency paid sick leave.

- You must be employed by one of the following:**
  - **A governmental agency**, except certain federal executive branch employees might be excluded. If a federal employee, USDOL encourages you to seek guidance from your employer.
  - **A private sector employer with less than 500 employees.**
    - [Small businesses with less than 50 employees](#) may be exempt from providing emergency leave for an employee's child care needs when doing so would jeopardize the viability of the business.
    - Employers can choose to exclude [health care providers and emergency responders](#).
- You must be unable to work (or telework).** You are unable to work if your employer has work for you and one of the COVID-19 qualifying reasons below prevents you from being able to perform that work, either at your normal worksite or by means of telework.
  - **What if you and your employer agreed to a modified schedule with the same number of work hours?** You are not able to claim emergency leave unless a qualifying reason arises that prevents you from working that modified schedule.
  - **What if your worksite is closed?** You cannot claim emergency leave, regardless of whether your employer closed your worksite for lack of business or pursuant to a government-mandated order. However, you may qualify for unemployment insurance. For more information about unemployment insurance, check with your State Department of Labor.
  - **What if you were furloughed?** You cannot claim emergency leave; however, you may qualify for unemployment insurance benefits. Check your state's Department of Labor website for more information.
  - **What if your employer reduced your hours?** You can still take paid sick leave and expanded family leave if a COVID-19 qualifying reason (see below) prevents you from working your full schedule. The amount of pay you are entitled to is based on your current work schedule.
- You must have a COVID-19 qualifying reason for being unable to work or telework.** COVID-19 qualifying reasons include:
  - (1) **You are subject to a federal, state, or local quarantine or isolation order related to COVID-19**, which includes a general shelter-in-place or similar stay-at-home order;
  - (2) **You have been advised by a health care provider to self-quarantine** related to COVID-19;
  - (3) **You are experiencing COVID-19 symptoms** and are seeking a medical diagnosis;
  - (4) **You are caring for an individual who meets one of the qualifying reasons above, (1)-(2).** The individual must be a member of your immediate family, someone with whom you share a home, or a "similar person with whom you have a relationship that would create an expectation that you would care for them if they were quarantined or self-quarantined";
  - (5) **You are caring for a son or daughter whose school or place of care has been closed due to COVID-19**, or whose child care provider is no longer available due to COVID-19.
    - NOTE: if you are requesting leave for this reason, you should also [check your eligibility for emergency family and medical leave](#).
  - (6) **You are experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services** (none have been specified at this time)

## II. Submitting notice and documentation to your employer.

- You must provide your employer with** the following information before taking leave:
  - Your name;
  - The date(s) for which leave is requested;
  - The COVID-19 qualifying reason for leave; and
  - An oral or written statement representing that you are unable to work or telework because of the COVID-19 qualifying reason.
- Your employer may request additional documentation depending on the COVID-19 qualifying reason for leave, including:** (consult the COVID-19 qualifying reasons on **Page 2**)
  - **Reason 1 (government-imposed quarantine or isolation order)** → the name of the government entity that issued the quarantine or isolation order;
  - **Reason 2 (self-quarantine pursuant to health care provider's advice)** → the name of the health care provider who advised you to self-quarantine (but not a document or doctor's note);
  - **Reason 4 (caring for another individual)** → either (1) the government entity that issued the quarantine or isolation order to which the individual is subject or (2) the name of the health care provider who advised the individual to self-quarantine;
  - **Reason 5 (caring for child)** →
    - (1) The name of the child being cared for;
    - (2) The name of the school, place of care, or child care provider that closed or became unavailable due to COVID-19;
    - (3) A statement representing that no other suitable person is available to care for your child during the period of leave requested.

## III. Calculating the sick leave pay owed to you by your employer.

- Calculate your rate of pay.** If your employer is covered and you qualify, your employer is required to pay you at your regular rate of pay, the federal minimum wage, or state or local minimum wage, whichever is greater. Your regular rate of pay is the average of your regular rate over a period of up to six months prior to the date on which you take leave.
  - **Have you worked with your employer for less than six months?** Your regular rate of pay is calculated based on the average of your regular rate of pay for each week you have worked for your current employer.
  - **Are you paid with commissions, tips, or piece rates?** These amounts are incorporated into your regular rate of pay calculation to the same extent they are included in the calculation of the regular rate under the Fair Labor Standards Act.
- Calculate the percentage of your pay rate owed to you.** The percentage of your pay rate owed to you depends on the reason for your leave. Consult the COVID-19 qualifying reasons on **Page 2**.
  - **Reasons 1-3 (leave for self-care)** → **You are due 100% of the required rate of pay.** The total pay, however, your employer is required to pay is \$511 per day or \$5,110 in total.
  - **Reasons 4-6 (care for an individual or child)** → **You are due 2/3 of the required rate of pay.** The total pay, however, your employer is required to pay is \$200 per day or \$2,000 in total.

# EMPLOYEE GUIDELINES: EMERGENCY FAMILY LEAVE

## I. Checking your eligibility for emergency family and medical leave.

- You have a son or daughter.** This includes:
  - Biological, adopted, or foster child;
  - Step-child;
  - A legal ward;
  - A child for whom you are [standing in loco parentis](#); and/or
  - An adult son or daughter who (1) has a mental or physical disability and (2) is incapable of self-care due to that disability.
- Your son or daughter’s school or place of care is closed, or child care provider is unavailable, due to COVID-19.**
- You have been employed by one of the following employers for at least 30 days** (employees who were laid off after March 1, 2020, and then re-hired are also eligible):
  - **A public agency or other unit of government**, except most federal employees are not covered.
  - **A private sector employer with less than 500 employees.**
    - [Small businesses with less than 50 employees](#) may be exempt from providing emergency sick leave based on an employee’s child care needs or emergency child care leave, when doing so would jeopardize the viability of the business.
    - Employers can choose to exclude [health care providers and emergency responders](#).
  - **Were you previously working as a temporary employee, and then hired full-time?** You may count any days you previously worked as a temporary employee towards this 30-day eligibility period.

## II. Submitting notice and documentation to your employer.

- You must provide your employer with** the following information before taking leave:
  - Your name;
  - The date(s) for which leave is requested;
  - The name of the child being cared for;
  - The name of the closed or unavailable school, place of care, or child care provider;
  - A statement representing that no other suitable person is available to care for your child during the period of leave requested.
  - For a child older than 14, special circumstances for which you need child care leave during daylight hours.
- You may be required by your employer to provide additional documentation.** This may include notice of school closure posted on a government, school or day care website, published in a newspaper, or e-mailed to you from an employee or official of the child care provider.

## III. Calculating the family and medical leave owed to you by your employer.

- The first two weeks of emergency family and medical leave are “unpaid.”** You can use emergency paid sick leave (see above), or accrued paid time off under your employer benefits package, at the same time to avoid a period without pay.
- Up to 10 weeks of paid leave at 2/3 the regular rate of pay.** Your employer is not required to pay you, however, more than \$200 per day or \$10,000 total.

# EMPLOYER GUIDELINES: PAID SICK LEAVE AND EXPANDED FAMILY LEAVE

## I. Determining whether you are required to provide emergency leave.

- Most public sector employers must provide leave**, except for certain federal executive agencies.
- Most private employers with less than 500 employees must provide leave.**
  - **The 500-employee threshold, explained:** An employer falls under the threshold if, at the time the employee's leave is taken, the employer has fewer than 500 full-time and part-time employees within the United States.
  - **The employee count determination includes:** employees currently on leave; temporary employees who are jointly employed by that employer and another employer (regardless of whose payroll); and any day laborers supplied by a temporary agency.
- Certain small businesses with less than 50 employees may be exempt from certain paid sick leave and expanded family and medical leave requirements if and only if**
  - (a) Employee is requesting leave because they need to care for their son or daughter due to a school or place of care closure, or their child care provider is unavailable, due to COVID-19; and
  - (b) Providing that employee with leave would jeopardize the viability of your business as a going concern.
  - (c) An authorized officer of the business has determined that certain conditions impacting the viability of the business are met.
- At this time, the USDOL is not requiring small businesses electing this exemption to send any proof or documentation. However, the employer must document how and why their business has met the USDOL criteria.

## II. Posting a Notice of the FFCRA requirements for employees.

- Each covered employer must post a notice of the FFCRA requirements in a conspicuous place on its premises.**
  - **Satisfactory methods include:** e-mailing and direct mailing this notice to employees; posting this notice on an employee information internal or external website.
  - USDOL has the notice available on the USDOL website in at least nine languages.
  - Additional FAQs about the notice requirement are also available on the USDOL website.

## III. Calculating Pay Due to An Employee

- Employers must calculate hours of leave to be paid based on the number of hours the employee is normally scheduled to work.**
  - If not known, or if the part-time employee's schedule varies, employers may use a six-month average.
  - If an employee has not been employed for at least six months, use the number of hours that the employer and employee agreed at hiring.
  - If there was no such agreement, employers can use the number of hours that the employee was scheduled to work over the entire time of their employment.
  - For additional information, please visit the FFCRA, Questions and Answers.
- Overtime hours must be included in an employee's pay only if the employee is taking emergency family and medical leave.**

- The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.
  - However, the Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period.
- Employers can pay employees more than the amount they are entitled to receive as part of FFCRA.** However, you will not receive a tax credit for amounts in excess of the FFCRA's limits.

### III. Claiming a Refundable Tax Credit.

Private sector employers that provide paid sick leave and expanded child care leave are eligible for reimbursement of the costs of that leave through refundable tax credits.

- Employers must retain appropriate documentation in your records.** Regardless of whether you grant or deny a request for leave, you must document the following:
- The name of the employee;
  - The date(s) for which leave is requested;
  - The reason for leave; and
  - A statement from the employee that they are unable to work because of the reason.
  - [Additional documentation can be requested](#) depending on the COVID-19 qualifying reason for leave.
- Consult IRS guidelines.** You should consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the procedures that you must follow.