

## The Families First Coronavirus Response Act: Paid Leave for Eligible Employees

By: [Andrew J. Turro](#) and [Matthew A. Marcucci](#)

Last week, President Trump signed into law the Families First Coronavirus Response Act (FFCRA). The table below summarizes key aspects of the FFCRA’s paid sick and family leave requirements. In this fast-changing environment, the US Department of Labor (“USDOL”) will issue regulations in the coming weeks interpreting the FFCRA’s provisions.

The USDOL has published an [Employee Rights Notice](#) that covered employers must make available to their employees. Employers with questions about Notice requirements should review the information [here](#), and those with questions about the FFCRA more generally should consult the helpful FAQs [here](#).

<b>Families First Coronavirus Response Act: Paid Leave</b>	
Operative Period: April 1, 2020 through December 31, 2020	
<b>Covered Employers</b>	<b>Eligible Employees</b>
<ul style="list-style-type: none"> <li>• Certain public employers.</li> <li>• Private employers with fewer than 500 employees.</li> <li>• Private employers with fewer than 50 employees may qualify for an exemption from the requirement to provide leave due to school closings or child care unavailability if such leave would jeopardize the viability of the business as a going concern.</li> </ul>	<ul style="list-style-type: none"> <li>• All employees of covered employers are eligible for 2 weeks of <b>paid sick time</b> for certain qualifying reasons.</li> <li>• Employees employed for at least 30 days are eligible for an additional 10 weeks of <b>paid family leave</b> to care for a child for certain qualifying reasons.</li> </ul>
<b>Qualifying Reasons for Paid Leave</b>	
<p>An employee qualifies for <b>paid sick time</b> if he/she is unable to work (or telework) because the employee is:</p> <ol style="list-style-type: none"> <li>1. subject to a Federal, State, or local quarantine or isolation order related to COVID-19;</li> <li>2. advised by a health care provider to self-quarantine related to COVID-19;</li> <li>3. experiencing COVID-19 symptoms and is seeking a medical diagnosis;</li> <li>4. caring for an individual subject to an order described in (1) or self-quarantine as described in (2);</li> <li>5. caring for a child whose school/place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or</li> <li>6. experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.</li> </ol> <p>An employee qualifies for <b>paid family leave</b> if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19 (i.e., qualifying reason (5) above).</p>	
<b>Duration of Paid Leave</b>	
<p>For qualifying reasons (1)-(4) and (6) above:</p> <ul style="list-style-type: none"> <li>• A full-time employee is eligible for two weeks of <b>paid sick time</b> at 40 hours a week.</li> <li>• A part-time employee is eligible for the number of hours of <b>paid sick time</b> he/she works on average over a two-week period.</li> </ul>	
<p>For qualifying reason (5) above:</p> <ul style="list-style-type: none"> <li>• A full-time employee is eligible for up to 12 weeks of leave (two weeks of <b>paid sick time</b> followed by 10 weeks of <b>paid family leave</b>) at 40 hours a week.</li> <li>• A part-time employee is eligible for leave for number of hours he/she is normally scheduled to work over a 12-week period.</li> </ul>	

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### Calculation of Pay

<u>For qualifying reasons (1), (2), or (3) above:</u>	Either the employee's regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).
<u>For qualifying reasons (4) or (6) above:</u>	Either 2/3 of the employee's regular rate or 2/3 of the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).
<u>For qualifying reason (5) above:</u>	<p>Either 2/3 of the employee's regular rate or 2/3 of the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period: 2 weeks of <b>paid sick time</b> followed by 10 weeks of <b>paid family leave</b>).</p> <p>An employee may elect to substitute accrued vacation leave, personal leave, or medical leave for the first two weeks of leave.</p>

### Enforcement and Penalties

The Department of Labor's (the "Department") Wage and Hour Division administers and enforces these paid leave requirements.

- The Department will observe a **temporary period of non-enforcement** for the first 30 days after the law takes effect, so long as the employer has acted reasonably and in good faith to comply. Such "good faith" exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the law in the future.
- Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid leave, or who files a complaint or institutes a proceeding under or related to the law.
- Employers in violation of the first two weeks' **paid sick time** or **unlawful termination provisions** of the law will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act.
- Employers in violation of the provisions providing for an additional 10 weeks of **paid family leave** are subject to the enforcement provisions of the Family and Medical Leave Act.

### Employer Tax Credits

Each dollar of **paid sick time** and **paid family leave**, plus the cost of the employer's health insurance premiums during such leave, is covered by a dollar-for-dollar refundable tax credit to the employer.

Employers may offset their payroll tax liability by the amount of leave they pay eligible employees. A Department of the Treasury [March 20, 2020 Press Release](#) explains:

- When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employee share of Social Security and Medicare taxes. Employers are required to deposit these taxes with the IRS and file quarterly payroll tax returns.
- Covered employers who pay **paid sick time** or **paid family leave** will be able to retain an amount of payroll taxes equal to the amount of leave they paid, rather than deposit these taxes with the IRS.
- If there are insufficient payroll taxes to cover the cost of leave paid, then employers may file a request for an accelerated payment from the IRS, which expects to process such requests in two weeks or less.