

On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act (“FFCRA”). The law takes effect April 2 and expires December 31, 2020. Key highlights include:



Emergency Paid Sick Leave

The FFCRA emergency paid sick leave is in addition to and may be used first before using other sick leave benefits. And the law does not diminish existing leave rights under employer policies.

The law provides for up to 10 days of paid sick leave for full-time workers and paid sick leave commensurate with hours worked for part-time employees. The key requirements and provisions of the paid sick leave provisions are as follows:

- Applies to public employers regardless of size.
- Applies to all employees (as defined under the Fair Labor Standards Act), regardless of the length of employment, including seasonal and temporary employees.
- Leave is available for immediate use, regardless of how long the individual employee has been working for the employer.
- Full-time employees are entitled to 80 hours of paid sick time (the equivalent of 10 eight-hour days).
- Part-time employees are entitled to the number of hours they ordinarily work on average over a 2-week period; for part-time employees with a variable schedule, leave is calculated based on the number of hours the employee was scheduled per day over the previous 6-month period.

Note: The Act allows employers or DOL to exempt out “emergency responders.” While educators would not ordinarily be classified as emergency responders, you should be aware of this possible “emergency responder” exemption. If members are designated as emergency responders, that could restrict their ability to access the FFCRA benefits.

Leave may be used only if the employee is unable to work (or telework) because of any of the following:

- Employee is subject to a federal, state, or local quarantine or isolation order related to coronavirus;
- Employee has been advised by a health care provider to self-quarantine due to concerns related to coronavirus;
- Employee is experiencing coronavirus symptoms and seeking a medical diagnosis;
- Employee is caring for an individual who is subject to a federal, state, or local quarantine or isolation order related to coronavirus; or who has been advised by a health care provider to self-quarantine due to concerns related to coronavirus

Note: There does not appear to be any particular relationship requirement to this “caring for” provision

- Employee is caring for a son or daughter if a school or place of care has been closed due to coronavirus, or the childcare provider of the son or daughter is unavailable due to coronavirus. “Son or daughter,” as under the FMLA, includes a biological, foster, or adopted child, a stepchild, a child of a domestic partner, a legal ward, or the child of a person standing *in loco parentis*, under 18 years of age.
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Labor and Secretary of the Treasury.

Emergency paid sick time may be used prior to any existing paid leave. Employers are prohibited from requiring employees to use other paid leave first and may not modify their existing paid leave policies to avoid being subject to this requirement.

Other key highlights include:

- After the first workday in which an employee receives emergency paid sick leave, the employer may require the employee to follow reasonable notice procedures
- Employers cannot require, as a condition of providing emergency paid sick leave, that an employee be involved in searching for or finding a replacement worker
- Employees are protected from retaliation (including job loss, discipline and discrimination) for using emergency paid sick leave or filing a complaint
- Emergency paid sick leave does not carry over from one year to the next, and is not paid out at the termination of employment

FFCRA also amends federal Family and Medical Leave Act (FMLA) to provide paid leave for childcare needs related to the coronavirus public health emergency for up to 12 weeks of leave. A few key provisions of this expansion are as follows.

This public health emergency leave is **only** available to employees who are unable to work (or telework) due to a need for leave to care for a son or daughter under the age of 18 if the school or place of care has been closed, or the child’s childcare provider is unavailable, due to a public health emergency related to coronavirus (as declared by a federal, state or local authority

Employee must only have been employed for at least 30 days to access this leave (as opposed to the 12-month employment period for FMLA).

The first 10 days may be *unpaid*.

For more information from the DOL, see here:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>