



COVID-19 Benefits Compliance Updates & FAQ

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Please note that the following is intended to be used for general guidance purposes only — it is not intended to constitute legal advice, nor is it a dispositive position on coverage. Each claim is subject to review by the applicable insurer and coverage is dependent upon the terms and conditions of your specific insurance policy.

COVID-19 Benefits Compliance Updates & FAQs

AGENDA

1. Families First Coronavirus Response Act – New Guidance and FAQs
2. CARES Act
3. Other New Guidance
4. State Law Considerations
5. Questions (Q/A Session)

****Disclaimer:** The information presented here is current as of March 31, 2020. The government is frequently issuing new guidance, and we will address updates each week.

Families First Coronavirus Response Act (FFCRA) – New Guidance and FAQs



Families First Coronavirus Response Act (FFCRA)

DOL New Guidance

- Q&As and Model Notice for:
 - Emergency Paid Sick Leave
 - Expanded FMLA
- Temporary Non-Enforcement Policy Bulletin

- What issues do the Q&As address?
- How do I provide the notice?
- What is meant by a non-enforcement policy?

DOL FFCRA: Questions and Answers



DOL Q&As – Emergency Paid Sick and Expanded FMLA Leave

Timeframe: Effective April 1, 2020

Applicable to leave taken between April 1, 2020 and December 31, 2020

Covered Employers

Those with under 500 employees *at the time the leave is to be taken*

Related entities use FMLA integrated employer test to determine size

- When are the leave provisions effective?
- Is there any retroactive effect ?
- Are part-time, leased and day laborers included in the count?
- Do the controlled group rules apply?

DOL Q&As – Emergency Paid Sick Leave & Expanded FMLA

Employee Eligibility

Emergency Paid Sick Leave (EPSL)– available to all employees.

Expanded FMLA (EFMLA)– available to employees employed by the employer for 30 calendar days

Limited Exclusions

- Are employees of non-profit organizations eligible?
- Are employees on furlough entitled to leave?
- What about employees whose worksite is closed?
- What employees may be excluded from coverage?

DOL Q&As – Emergency Paid Sick Leave & Expanded FMLA

EPSL applies to employees who are:

1. Subject to a Federal, State or local quarantine or isolation order related to COVID-19
2. Advised by a healthcare provider to self-quarantine related to COVID-19
3. Experiencing COVID-19 symptoms and seeking a medical diagnosis
4. Caring for an individual subject to an order described in (1) or self-quarantine as described in (2)
5. caring for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons
6. Experiencing similar conditions specified by HHS (in consultation with the DOL and Treasury)

- If an employee takes 80 hours EPSL for one reason (e.g., self-quarantine) are they entitled to another 80 hours for a different reason later in the year?
- Who is a ‘healthcare provider’ for purposes of the second reason?

DOL Q&As – Emergency Paid Sick Leave & Expanded FMLA

Expanded FMLA is available for:

- Employees who are unable to work OR telework because they must care for son/daughter under 18 whose school or child care is unavailable due to COVID-19
- Up to 12 weeks, first 2 weeks unpaid and remaining 10 at 2/3 regular rate of pay capped at \$200 per day/\$10,000 aggregate

- Who is a 'son' or 'daughter'?
- Can an employee take conventional FMLA and the EFMLA?
- Does the regular rate of pay include overtime?

DOL Q&As – Emergency Paid Sick Leave & Expanded FMLA

Leave Entitlement and Period

Emergency Paid Sick Leave (EPSL)–

- Up to 80 hours (2 weeks)
 - at regular rate of pay for self-care capped at \$511 per day/\$5,110 aggregate
 - at 2/3 pay for care of another capped at \$200 per day/\$2,000 aggregate

Expanded FMLA (EFMLA)

- Up to 12 weeks, first 2 weeks unpaid and remaining 10 at 2/3 regular rate of pay capped at \$200 per day/\$10,000 aggregate

- Can EPSL or EFMLA be taken intermittently?
- How does EFMLA interact with EPSL or other employer-provided paid leave? Would the leaves run concurrently?

DOL Q&As – Emergency Paid Sick Leave & Expanded FMLA

Documentation Requirements

DOL refers to IRS substantiation requirements for tax credit.

For Expanded FMLA, the employer could use a process similar to that used for conventional FMLA.

- What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?
- What are examples of supporting documentation for the EFMLA?

DOL Q&As – Emergency Paid Sick Leave & Expanded FMLA

Additional Q&A Topics Covered

- Small business exemption
 - “Health care provider” & “emergency responder” (as it pertains to the exclusion for certain employees)
 - Employers subject to multiemployer collective bargaining agreements
 - Application of the FFCRA to public employers
 - Enforcement of the FFCRA and the entities for employees to call if they don’t receive required leaves
- Is there guidance on how small businesses will request the exemption?
 - Who are the health care providers and emergency responders that can be excluded? Can all employees of the employer be excluded?
 - How can employers subject to multiemployer CBAs meet the FFCRA’s requirements?
 - Do public employers have to comply with the FFCRA?
 - Who can employees call if their employer refuses to provide required leave?

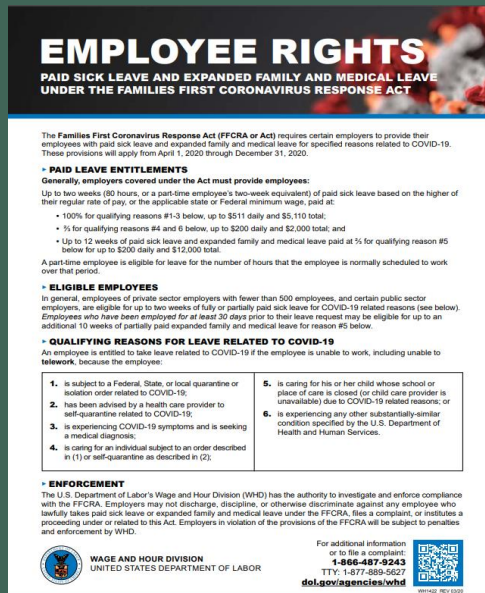
FFCRA: Notice Requirements



FFCRA: Notice Requirements

DOL Model FFCRA Notice

- Explains EPSL and EFMLA eligibility, entitlements, reasons and enforcement
- Notice is accessible on DOL website for download and printing



EMPLOYEE RIGHTS
PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE
UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

PAID LEAVE ENTITLEMENTS
Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

ELIGIBLE EMPLOYEES
In general, employees of private sector employers with fewer than 500 employees, and certain public sector employees, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19
An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;	5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or
2. has been advised by a health care provider to self-quarantine related to COVID-19;	6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;	
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);	

ENFORCEMENT
The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

For additional information or to file a complaint:
1-866-487-9243
TTY: 1-877-589-5627
dol.gov/agencies/whd

WHD-1422 REV 10/20

- What guidance does the DOL provide along with the notice?
- Is the notice available in more than one language?
- What is the deadline for providing the notice?

FFCRA: Notice Requirements

ER must “post” FFCRA Notice by:

- Posting in visible place on premises
- Emailing
- Direct mailing
- Posting to employee internal/external website

- Does notice need to be provided to laid off employees?
- What about new hires?
- Do I need to post it at all work locations?

DOL Temporary Non-Enforcement Bulletin



DOL Field Assistance Bulletin 2020-1

DOL Temporary FFCRA Non-Enforcement Policy

- Extends through April 17, 2020
- DOL will not bring enforcement action for FFCRA violation provided employer has made reasonable, good faith compliance effort.

- How is “reasonable” and “good faith” defined?
- What happens if I mistakenly violate the FFCRA?

Coronavirus Aid, Relief and Economic Security Act (CARES Act)



Coronavirus, Aid, Relief and Economic Security Act (CARES Act)

Enacted March 27, 2020

Comprehensive economic stimulus package

Loans to small businesses

Unemployment benefit expansion

Several Employee benefit-related provisions

- When is it effective?
- Is it permanent or temporary?
- Will there be more regulations/guidance to come?
- What types of employee benefits are affected?

CARES Act – Health Plan Provisions

- Telehealth can be provided without cost-sharing without endangering HDHP status or HSA eligibility
- Over-the-counter drugs and menstrual products can be reimbursed from HSAs, HRAs, and FSAs

- Does the Act mandate telehealth coverage?
- Is the telehealth expansion permanent?
- When is the OTC drug provision effective?
- Is the OTC drug provision permanent?

CARES Act – Health Plan Provisions

COVID-19 Testing and Treatment:

- Expands the types of COVID-19 tests that must be covered without cost-sharing (pursuant to the FFCRA)
- Requires COVID-19 preventive services to be covered without cost-sharing
- Requires providers to publicize cash price of COVID-19 tests

- What additional types of COVID-19 tests must be covered?
- Will any future COVID-19 immunization or vaccine be covered without cost-sharing?
- Will group health plans and carriers pay the publicized price or a negotiated rate?

CARES Act – Retirement Plan Provisions

- Increased hardship distributions up to \$100,000, without the 10% early withdrawal penalty – for “qualified individuals”
- Loans for “qualified individuals”:
 - Increased plan loans up to \$100,000 or 100% of the vested balance of the plan
 - Current loans may delay repayment due between March 27, 2020 and December 31, 2020
- Required minimum distributions temporarily waived

- Who is eligible to take a hardship distribution for COVID-19 purposes?
- When must taxes on the distribution be paid?
- How long may participants delay their repayment of loans?
- How long will the RMD waiver last?

CARES Act – Retirement Plan Provisions

Plan Administration:

- Plan amendments must be made on or before the last day of the first plan year beginning on or after January 1, 2022
- The DOL has authority to potentially postpone certain deadlines under ERISA

- Would plan amendments be retroactive?
- Could the Form 5500 filing deadline be delayed?

CARES Act – Other Provisions

- Student loan repayments can be reimbursed under IRC Section 127
- Small business loans would allow employers to take out loans to pay for health insurance premiums
- Expanded unemployment program provides assistance to employees that may be furloughed

- What is the limit on employer-provided student loan repayments?
- Is the student loan provision permanent?
- Can employees receive unemployment while also being paid under FFCRA benefits?

Other Regulatory Updates



IRS Filing and Payment Deadline Extension Q&As

- Follows **IRS Notice 2020-18**, which automatically extended the due date for filing Federal income tax returns and making payments from April 15, 2020 to July 15, 2020.
- Relief extends to any type of taxpayer, such as an individual, a trust, an estate, a corporation, or any type of unincorporated business entity with a return or payment due April 15, 2020.
- Taxpayers do not have to file for the extension.

- Does this relief give me more time to contribute to my HSA for 2019?
- Do I also have additional time to make a 2019 IRA contribution?

State Law Considerations



State Law Considerations

Some themes in state requests:

- Expanded telehealth coverage mandated/recommended, some with no cost-sharing
- Required payment flexibility
- Prior authorization waived for COVID-19 testing and treatment
- Additional prescription drug refill opportunities
- Recommended facilitation of social distancing

- Implications for multi-state employers? What about self-insured plans?
- Compliance implications of insurers also stepping in with additional coverage or special enrollment periods?
- Are insurers being required to notify insureds of the state mandates or recommendations?

State Law Considerations

COVID-19 Special Enrollment Periods

- Allows for enrollment in coverage for a limited period as a result of public health emergency
- Concern is uninsured may avoid testing or treatment due to costs
- Enrollment may be through a state exchange (NY, CT) or individual carrier

- Who is eligible to enroll?
- What is the enrollment period?
- When is the coverage effective?

State Law Considerations

- BE AWARE: Some states have also passed laws requiring COVID-19 protected leave for certain employees who cannot work or telework.
 - E.g., NY law extends protected leave to employees subject to orders of isolation or quarantine who cannot telework
 - Application of NY law is not limited to small employers, although benefits vary by size and net income.

- If an employer is subject to both federal and state leave laws, how are the benefits determined?

Q/A Session: Questions Please!



Resources:

FFCRA <https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>

FFCRA Fact Sheet <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

FFCRA: Questions and Answers: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

FFCRA Non-enforcement Bulletin <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1>

FFCRA Model Notice

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

FFCRA Notice FAQs <https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>

CARES Act <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>

IRS Filing and Payment Deadline Extension Q&As <https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers>

Visit our Latest Insights page for more COVID-19 coverage

<https://latest-insights.nfp.com/>



Tomorrow's Webinar: COVID-19 HR Solutions Updates & FAQs

https://nfp.zoom.us/webinar/register/WN_v7PxVzb3QgeVzUolZw1Jiw

