

Families First Coronavirus Response Act

In response to the novel coronavirus, aka COVID-19, outbreak, President Trump has signed into law emergency legislation known as the Families First Coronavirus Response Act (FFCRA) to assist American families and businesses. You *could* read the law and try to understand it for yourself, or you could read our analysis of it below.

Overview of the new law

The intent of the new law is to provide emergency paid sick leave and paid family and medical leave, as well as additional funding to food assistance and unemployment programs, in response to COVID-19.

[According to Pew Research](#), almost a quarter of American workers do not have paid sick leave. Many of these people work for small businesses that employ between 1 and 100 employees. Likewise, the US doesn't have nationally mandated paid family and medical leave.

The Families First Coronavirus Response Act (FFCRA) steps in to close the gap for these workers by providing two weeks of paid sick leave. It also provides up to 12 weeks of family and medical leave by making amendments to the Family and Medical Leave Act (FMLA).

Please note: These benefits are not permanent; they only apply to a public health emergency (PHE) due to the COVID-19 outbreak.

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Because this is an additional cost for small businesses, the FFCRA also provides some exemptions and tax credits for those who qualify.

These benefits and credits are also available to the self-employed and gig workers, although the FFCRA has [a few extra requirements](#) for demonstrating that such workers comply with the rules.

Timing

The FFCRA was signed into law on **March 18, 2020** and the government agencies have been instructed that they must be ready within **15 days of that date to support** these new types of leave. All of the benefits will expire on **December 31, 2020**.

Food Assistance For Low-Income Families

The first part of the FFCRA relates to assistance for families who normally receive reduced or free school lunches. There is additional funding for food programs such as the

- Supplemental Nutrition Assistance Program (SNAP), the
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- The Emergency Food Assistance Program (TEFAP).

How To Qualify

If schools for children of these families are consecutively closed for five days or more, the families will be eligible for additional food assistance through meals at home. These benefits will likely be provided through the regular electronic benefit transfer (EBT) system currently used for these programs.

Emergency Paid Leave

One of the new benefits created by the FFCRA is what's known as "emergency paid leave." If an individual is unable to work because COVID-19 has affected them in one of the ways detailed below, they may be able to take up to two weeks (10 workdays) off and still get paid.

- 1) The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
- 2) The employee is quarantined at the direction of a health authority or healthcare provider to prevent spread of COVID-19.
- 3) The employee is experiencing symptoms of COVID-19 and is seeking a diagnosis.
- 4) The employee is caring for another person who is subject to #1 or #2 above.
- 5) The employee is caring for a child or another person due to closure of a school or other facility due to COVID-19.
- 6) The employee is experiencing similar conditions that have been specified by the US Department of Health and Human Services (HHS).

Amount Paid

Full-time employees are **eligible for 80 hours** and part-time folks get their **average number of hours worked in a two-week period.**

Rate Of Pay

The amount of the benefit depends on how the employee qualifies. For example, if an individual is subject to #1, #2, or #3 above, they will be paid the *greatest* of:

- **Their regular rate of pay;**
- **The Fair Labor and Standards Act (FLSA) minimum wage rate; or**
- **The state or locality's minimum wage rate.**

The maximum benefit is \$511 per day for 80 total hours (i.e., two work-weeks), which works out to a total maximum benefit of \$5,110

If an employee qualifies because of #4, #5, or #6 above, then the amount is two-thirds of the applicable rate, with a maximum benefit of \$200 per day and a total max benefit of \$2,000.

Conditions Apply

Both employers and employees are subject to some conditions under this new kind of leave.

For employees:

- Emergency paid leave does not carry over from one year to the next.
- Emergency paid leave ends as soon as the employee's next scheduled shift starts after they no longer qualify for the paid time.
- Employees don't have to find anyone to cover for them if they're taking emergency paid leave.
- Employees can use emergency paid leave before their regular accrued paid sick time, if they have it.
- Emergency paid leave does not reduce other accrued leave that an employee may have already.

For employers:

- Employers have to post all this information in a conspicuous place, like a break room. The US Department of Labor (DOL) will provide an example (usually a poster).
- An employer cannot fire, discipline, or discriminate against any employee for using or requesting emergency paid leave
- Employers who are subject to bargaining agreements must contribute expected amounts to a fund, and the union will distribute to its members as requested.

Any Exceptions

Yep. Employers with **fewer than 50 employees** may be exempt, but only **with permission from the US Secretary of Labor**. Also, employees who are healthcare workers or emergency responders can be excluded by their employers because, you know, they'll probably be working during a PHE.

Emergency Paid Leave Amendments to the FMLA

The FFCRA amends the FMLA to include paid leave for public health emergencies when an employee is unable to work (or telework) due to a school or child care facility closure, or if the individual is unavailable as a result of COVID-19 precautions.

So FFRCA not only provides paid sick leave for employees who have been impacted by COVID-19, it also provides them emergency family leave, and protects them from losing their jobs.

Benefits of Public Health Emergency (PHE) under FMLA

Paid family and medical leave under the FMLA will be slightly different from the emergency paid leave

- Employees are eligible for **two-thirds of their regular pay based** on the hours they'd normally work.
- Benefit cannot exceed \$200 per day or the aggregate of \$10,000 and 50 days.
- Variable-hour employees will be eligible based on the average number of hours they worked in the six months prior to the start of their leave.
- If the employee didn't work the last six months, then it will be based on the amount that was anticipated when they were hired.

Who Is Eligible

Employees are eligible if they have been employed for at **least 30 days** and are unable to **work because of the need to care for a child under 18 years of age whose school or place of care has been closed, or if they are unavailable due to a COVID-19 PHE.**

Just like the emergency paid leave, employees who are healthcare providers and emergency responders are *not* eligible for this benefit.

Who Is Subject To These New Rules

These FMLA amendments will apply to employers with fewer than 500 employees.

Conditions Apply

For employees:

- An employee may elect to use *other* accrued paid sick, personal, or vacation time during the first 10 days of leave. This would allow employees to still get paid during the initial period of emergency leave under FMLA.
- An employee must provide the employer with notice as soon as is practical, and the employer may require documentation to support the need.

For employers:

- Like all leave under the FMLA, the employer **must restore the employee** to their position after the leave has ended.
- An employer **does not have to pay** an employee for their first 10 days of leave, but must pay for every day of leave after the first 10 days have passed.
- Employers of unions must contribute to a fund that will be distributed by the union to its members based on their hours worked.

Exceptions

Employers with 50 employees may be exempt from these requirements if the US Secretary of Labor determines that they will jeopardize the business's viability as a going concern.

Employers with fewer than **25 employees can** be exempt from restoring an employee to their position after their leave but *only* if they meet the following criteria:

- The position no longer exists due to economic conditions caused by the PHE
- The employer makes reasonable efforts to restore the employee to a similar position with equivalent compensation and benefits
- If the above fails, the employer makes reasonable efforts in the year following the end of the leave (or 12 weeks after the leave starts, whichever is earlier) to let the employee know when an equivalent position exists again

Consistent with the FMLA, these new amendments make it very difficult for an employer to dismiss a worker for taking this leave. And they can only do so after trying to provide recourse via another equivalent position.

Coverage for COVID-19 testing

The other major piece of this legislation is coverage for COVID-19 testing. All health insurance plans are required to provide Food & Drug Administration-approved testing and any related office, urgent, emergency care, or telehealth visits related to a COVID-19 diagnosis *free of charge*.

That means no premiums, no co-pays, no deductibles, etc. Medicare, Medicaid, Children's Health Insurance Program (CHIP), Indian Health Service, and TRICARE are all required to do the same.

Employer Tax Credits For Providing These Benefits

Employers, including self-employed folks, can qualify for tax credits to offset the cost of both emergency paid leave and paid leave under the FMLA. The credits are pretty similar, but we've broken both out here to keep things simple.

Tax Credit For FMLA PHE Leave

Any PHE paid leave under the FMLA can be 100% covered by way of a **tax credit on an employer's share of Social Security taxes on a quarterly basis**. Remember, the amount per paid day for an employee shall not exceed \$200 with a \$10,000 maximum for the year.

The **quarterly tax credit cannot exceed the employer's share of Social Security taxes** in that quarter, however, any excess credit can be used by the business as an overpayment against future tax.

In addition to the paid leave, health plan expenses paid by the employer while the employee is on leave can also be counted toward the 100% paid in wages to the employee.

This should be done on a pro rata, or proportional, basis for each employee and must be directly related to additional costs the employer had to take on as a result of supporting these new emergency paid leave options.

Who's Eligible for The Tax Credit?

All employers are eligible if they pay wages related to the new types of emergency leave mentioned above. Self-employed individuals are also eligible for a tax credit within the same limits as if they were an employee at another business. If they're unable to work due to the same factors as a qualified employee, they can get either \$200 per day or 67% of their average daily self-employment income, whichever is lower.

Conditions apply

Self-employed individuals have a **maximum of 50 days** for use of the credit for FMLA PHE leave. Those who are self-employed should maintain documentation to prove their eligibility for all of this.

Tax Credit For Emergency Paid Leave

Employers can have **100% of emergency paid leave covered by payroll tax credits on a quarterly basis**, but **only for a maximum of 10 days for each employee, including days in previous quarters**.

Recall, the amount of emergency paid leave per day for an employee is limited to \$511 if the employee is qualified because of #1, #2, or #3 (i.e., self care), or \$200 per day if the employee is qualified because of #4, #5, or #6.

Just like the credit for leave under the FMLA, **this quarterly tax credit cannot exceed the employer's share of Social Security taxes in that quarter**. The excess tax credit can be used by the business as an overpayment of taxes that can be applied to tax in a future period.

The qualified health plan expenses an employer pays in order to provide and maintain the group health plan while an employee is on emergency leave can also be counted above the 100% paid in wages to the employee.

Again, all of this should be done on a pro rata basis for each employee and must be directly related to additional costs the employer had to take on as a result of supporting these new paid leave options.

Who Is Eligible For The Tax Credit?

Just like the FMLA credit, self-employed individuals are eligible for a tax credit within the same limits as if they were an employee at another business.

How Much Is The Credit?

If an individual is unable to work, they can get the lesser of \$511 or 100% of their average daily self-employment income (or \$200 or 67% as noted above).

Conditions Apply

Self-employed individuals should maintain documentation to prove eligibility for all of this.

Sources

New emergency paid sick leave and tax credits

Retrieved from:<https://gusto.com/blog/business-finance/coronavirus-relief-resources>