

On March 18, 2020, President Trump signed the **Families First Coronavirus Response Act** (FFCRA). This legislation provides relief for workers in response to the COVID-19 pandemic. The FFCRA takes effect on April 1, 2020, and expires on December 31, 2020.

The two key parts of this legislation provide employee leave and pay benefits: (1) the Emergency Family and Medical Leave Expansion Act and (2) the Emergency Paid Sick Leave Act (EPSLA). Both laws apply to private employers with fewer than 500 employees.<sup>1</sup> Additionally, businesses with fewer than 50 employees may be exempt.<sup>2</sup>

#### Emergency Family and Medical Leave Expansion Act (Emergency FMLA Expansion Act)<sup>3</sup>

Eligible employees can take leave for “a qualifying need related to a public health emergency” for **up to 12 weeks** from the date on which the employee’s leave commences.

#### Who is eligible?

Employees who have worked for their employer for at least 30 calendar days.

- Some health care providers and emergency responders may be excluded by the Secretary of Labor.<sup>4</sup>

#### When is emergency leave available?

An employee can take emergency leave if she is unable to work (or telework) because she must care for a “son or daughter under 18 years of age” due to a school or childcare provider closing.

- Son or daughter means a biological, adopted, foster child, step child, legal ward, or a child of a person standing in loco parentis who is either under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability.

#### Do I get paid during emergency leave?

The first 10 days of public health emergency leave are **unpaid**.

- Employees may elect to substitute accrued but unused vacation, personal, medical or sick leave benefits (if the employee has those benefits).

After the first 10 days, the rest of the public health emergency leave must be paid by the employer.

- The employee must be paid no less than two-thirds of their regular wage, up to \$200 per day and \$10,000 in total.

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<sup>1</sup> *US Enacts the Families First Coronavirus Response Act*, COOLEY (March 20, 2020), <https://www.cooley.com/news/insight/2020/2020-03-20-us-enacts-the-families-first-coronavirus-response-act>.

<sup>2</sup> Emergency Family and Medical Leave Expansion Act § 110(a)(3)(B), CONGRESS.GOV (last visited March 24, 2020), <https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>.

<sup>3</sup> *H.R. 6201 – Families First Coronavirus Response Act*, CONGRESS.GOV (last visited March 24, 2020), <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>.

<sup>4</sup> *Id.* at Sec. 3105

## Can I lose my job for taking emergency leave?

If you work for a company with less than 25 employees, your employer may not be required to protect your job if certain conditions are met:

1. An employee took public health emergency leave;
2. The position no longer exists due to changes in the employers' economic or operating conditions that affect employment and are caused by the public health emergency during the period of leave;
3. The employer made reasonable efforts to restore the employee to an equivalent position with equivalent benefits, pay and other terms and conditions of employment; and
4. After failing to find an equivalent position, the employer contacts the employee if an equivalent position becomes available during the "contact period" which is the earlier of:
  - a. The date the employee's public health emergency leave concludes or
  - b. The date that is 12 weeks after such leave began.

### Emergency Paid Sick Leave Act (EPSLA)

The EPSLA permits full-time employees to take up to 80 hours of paid sick time if they are unable to work (remotely or otherwise) for any of the qualifying uses below. Eligible part-time employees are entitled to paid sick time equal to the number of hours they work on average over a two-week period.

#### Who is eligible?

Any employee, regardless of how long the employee has been employed.<sup>5</sup> This includes part-time and temporary employees.

#### When can I use paid sick time?

Employees can use paid sick time if they are unable to work for any of the following reasons<sup>6</sup>:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for a family member who is subject to a federal, state, or local quarantine or isolation order, or advised by a healthcare provider to self-quarantine, due to COVID-19;
5. The employee is caring for their child due to a COVID-19 related school/childcare provider closure; or

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<sup>5</sup> Emergency Paid Sick Leave Act §5102(e)(1), CONGRESS.GOV (last visited March 24, 2020), <https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>.

<sup>6</sup> *Id.* at §5102(a)(1)-(6)

6. The employee is “experiencing any other substantially similar condition” specified by the Secretaries of the Department of Health and Human Services, Treasury Department, and Department of Labor.

Employees may use their accrued but unused employer-provided paid sick time before using paid sick time, but an employer **may not** require them to do so.

#### **How much sick leave do I have?**

- 1) Full time employees are entitled to 80 hours (10 days) of paid sick time.
- 2) Part-time employees are entitled to the average number of hours worked over a 2-week period.

#### **What will I earn during sick leave?**

You will earn your regular rate of pay, which must be greater than federal minimum wage (\$7.25), or greater than your state or local minimum wage.<sup>7</sup>

- For example, in Nebraska, the state’s minimum wage is \$9.00. The employee must earn their regular rate of pay or \$9.00 an hour, whichever is greater.

The rate of pay depends on the reason for taking paid sick leave.

An eligible employee can earn up to \$511 per day – or a maximum of \$5,110 for their 10 days of paid sick leave – if the qualifying use relates to the first three permitted uses:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

By contrast, an eligible employee can only earn up to \$200 per day – or a maximum of up to \$2,000 for their 10 days of paid sick leave – if any of the other qualifying uses apply:

1. The employee is caring for a family member who is subject to a federal, state, or local quarantine or isolation order, or advised by a healthcare provider to self-quarantine, due to COVID-19;
2. The employee is caring for their child due to a COVID-19 related school/childcare provider closure; or
3. The employee is “experiencing any other substantially similar condition” specified by the Secretaries of the Department of Health and Human Services, Treasury Department and Department of Labor.

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<sup>7</sup> *Id.* §5110(5)(B)(i)(I-III)

**Can I be fired for using my sick leave?**

No. An employer cannot fire, discipline, or discriminate against an employee who takes sick leave under this act.<sup>8</sup>

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<sup>8</sup> *Id.* §5104