

Summary of The Coronavirus Response Acts

The Families First Coronavirus Response Act (FFCRA) was signed into law on March 18, 2020. The Coronavirus Aid, Relief and Economic Security Act (CARES) was signed into law on March 27, 2020. Here are some of the key points.

General Summary

1. The FFCRA covers as an employer any person or any private entity and many public entities engaged in or affecting commerce who employs at least 1 person and fewer than 500.
2. The FFCRA creates two types of emergency paid sick leave, basic sick leave and paid FMLA, both of which are paid for initially by the employer and reimbursed through a tax credit.
3. The provisions all become *effective on April 1, 2020* and *expire at the end of 2020*.
4. The emergency paid sick leave is for employees who:
 - a. Are quarantined because they have contracted COVID-19; or
 - b. Are seeking a medical diagnosis because they have symptoms of COVID-19; or
 - c. Have been advised by a health care provider to self-quarantine due to concerns related to COVID-19 (for example, they are in a high-risk group); or
 - d. Is caring for someone who is subject to a Stay at Home Order or who has been advised to self-quarantine by a health care provider; or
 - e. Is caretaking for their child as a result of a school or other closure/unavailability of care caused by COVID-19.
 - f. Per DOL guidance, paid sick leave is **not** available to employees because their business closed as a result of a “Stay at Home” Order or otherwise due to COVID-19.
5. The Emergency Family Medical Leave Act (EFMLA) expansion (including partial paid leave) is for employees who are unable to work (and cannot work from home) because they need to care for their children because their school or other place of care has closed or become unavailable due to COVID-19 related circumstances.
6. Employee rights under collective bargaining agreements are preserved and protected.

7. Up to 100% of the employer's cost will be reimbursed through a tax credit.
8. The passage of FFCRA was a congressional fire drill. There is little guidance available, and it may be weeks before there are final regulations issued. It has already been modified slightly by the later CARES Act. In the meantime, we have to interpret its requirements based on its language, the congressional intent as expressed in its terms, recent DOL guidance, and its relationship to other laws.
9. In addition to tweaking FFCRA, CARES significantly temporarily expands unemployment compensation, both for people who are unemployed because of COVID-19 and those who are not.

I. Emergency FMLA Expansion Act.

- a. Covers people who were employed or self-employed within the prior 30 days who are absent from work due to caretaking of own child under the age of 18 because of a COVID-19 closure or unavailability of care including inability to telework.
- b. Scope of Paid Leave.
 - i. Starts 10 days after leave commences (employee may elect to use other paid leave during this time).
 - ii. Is available for 10 additional weeks, in the same manner as calculated for unpaid FMLA.
- c. Pay Amount: 2/3 of the individual's daily pay, capped at \$200/day and \$10,000 in total.¹ Hours paid are those the employee normally works or, if the schedule varies considerably, the average hours an employee worked over the last six months.
- d. Intermittent Leave: Unless leave is for childcare or the employee is teleworking, once leave starts it has to be taken in full-day increments and must continue until exhausted or until the employee no longer has a qualifying reason for leave. This requirement is to protect against the spread of disease.
- e. Notice: the employee must give as much notice as practical if leave is foreseeable.
- f. Restoration of Employment: is not required if the employer has fewer than 25 employees and the position no longer exists due to the public health crisis, and the employer makes reasonable effort to place the employee in an equivalent position immediately and within the year following the end of the public health emergency or the year following the 12th week after the commencement of leave, whichever is earlier.
- g. Prohibitions and Penalty: As an extension of FMLA, an employer is prohibited from

¹ An employee may elect to substitute paid vacation, personal or medical/sick leave but is not required to do so. An employee may *not* elect to supplement the 2/3 leave pay under EFMLA with other paid leave without employer agreement.

interfering with, restraining or denying an employee's attempt to exercise a right under the Act, and is also prohibited from retaliating against an employee for doing so or for opposing a violation of the Act. Violation of the Act can result in an employer owing an employee back pay and benefits, interest, liquidated damages, attorney fees and costs, as well as having to reinstate or promote the employee. Employer with less than 50 employees may be exempt if compliance would jeopardize the financial viability of the business.

- g. Absence from Work Includes Unavailability to Telework. This means, for example, that an employer with an employee who is self-quarantining but not showing symptoms of COVID-19 can have the employee to work from home instead of paying the employee sick leave.

II. Emergency Paid Sick Leave Act.

- a. Available No Matter How Long the Person has Worked for the Employer. An employee may start taking leave on the first date of employment or April 1, 2020, whichever is later.
- b. Amount and Purpose: 10 workdays of leave paid at the rate of:
 - i. 100% of employee's regular wages if used for own COVID-19 illness, quarantine or diagnosis (a \$511 cap);
 - ii. 2/3 of employee's regular wages if used for caretaking of someone with COVID-19, someone quarantined for COVID-19, or the employee's child whose school or childcare is unavailable due to COVID-19 (capped at \$200/day).
 - iii. Full time employees are paid for 80 hours; part-time employees are paid for their average hours over a two-week period.
 - iv. Absence from work includes unavailability to telework.
- c. Does not include benefit payments.
- d. Can be used first, even if the employee has other paid leave. This is **additional** leave.
- e. The employer may not require the employee to search for a replacement to cover the hours of absence.
- f. After the first day of leave, the employer can require reasonable notice from the employee to continue the leave.
- g. Employer Notice Requirement. An employer is required to post the notice provided by the Secretary of Labor, which is now available.

- h. Sick leave is not required to be paid out upon a separation from employment (i.e., if the employee quits, is fired, is laid off, takes disability, etc.).
- i. Sick leave will not carry over from year to year.
- j. An employer is prohibited from discriminating against an employee who takes leave under the Act and is also prohibited from retaliating against an employee for opposing a violation of the Act. Violation of the Act can result in an employer owing an employee back pay and benefits, interest, liquidated damages, attorney fees and costs, as well as having to reinstate the employee.
 - k. Absence from Work Includes Unavailability to Telework. This means, for example, that an employer with employee who is self-quarantining but not showing symptoms of COVID-19 can have the employee to work from home instead of paying the employee sick leave.

III. CARES Act Expansion of Unemployment Compensation.

CARES expands unemployment compensation in the following manner (mostly through December 31, 2020) for traditional employees who would normally be eligible for unemployment compensation:

- a. By increasing the weekly benefit by \$600;
- b. By increasing the number of weeks a benefit is available by 13 weeks. Note, it appears that after the original State unemployment runs out, the employee may only receive \$600/week, rather than \$600 plus the original State amount;
 - a. In Illinois, employees may now receive benefits for 39 weeks;
 - b. In Missouri, employees may only receive benefits for 33 weeks.
- c. By eliminating the waiting week;
- d. By fully funding existing State “short-term compensation programs” in which the employer reduces the employee’s hours by 10-60% rather than laying off the employee and the employee is entitled to pro-rated unemployment compensation;
- e. By encouraging States that don’t already have them to add “short-term compensation programs” by providing grants to start up the programs and then funding 50% of the program;.
- f. Benefits are retroactive to the first day of unemployment or reduced employment retroactive to January 27, 2020;
- g. These expansions do not rely on the unemployment being caused by COVID-19.
- h. Benefits are taxable to the employee.

CARES also offers unemployment compensation to employees who would traditionally not be eligible for it:

- a. Covers the self-employed, independent contractors, gig workers, employees who have

- exhausted traditional benefits, nonprofits, Indian tribes and government agencies²; and
- b. Covers 50% of the cost paid by nonprofits, Indian tribes and government agencies to cover these benefits;
 - c. The unemployment must be a direct result of COVID-19, i.e., any of the reasons that leave is provided under the Emergency Paid Sick Leave Act, plus because the head of household died due to COVID-19, the employee was scheduled to start a job but couldn't due to COVID-19, the employee's work closed due to COVID-19 or the employee was forced to quit a job because of COVID-19 (for example, because the workplace is demonstrably unsafe);
 - d. An employee is *not* eligible for benefits if s/he voluntarily quits work out of concern of catching COVID-19;
 - e. Retroactive to the first day of unemployment or reduced employment retroactive to January 27, 2020 and available for the State maximum number of weeks plus 13 additional weeks;
 - f. The weekly benefit amount is computed based on 100% of usual net pay, but not less than \$600/week plus half of the average State unemployment benefit for a traditional employee;
 - g. The employee cannot be receiving pay for telework;
 - h. The employee cannot be receiving paid leave benefits;
 - i. The employee does not need to be actively searching for work if the reason for benefits is COVID-19-related; per its current guidance, Illinois still requires an active search if the reason for benefits is the closure of a child's school or childcare.
 - j. Benefits are taxable to the employee.

² Illinois guidance currently doesn't cover employees who have exhausted traditional benefits.