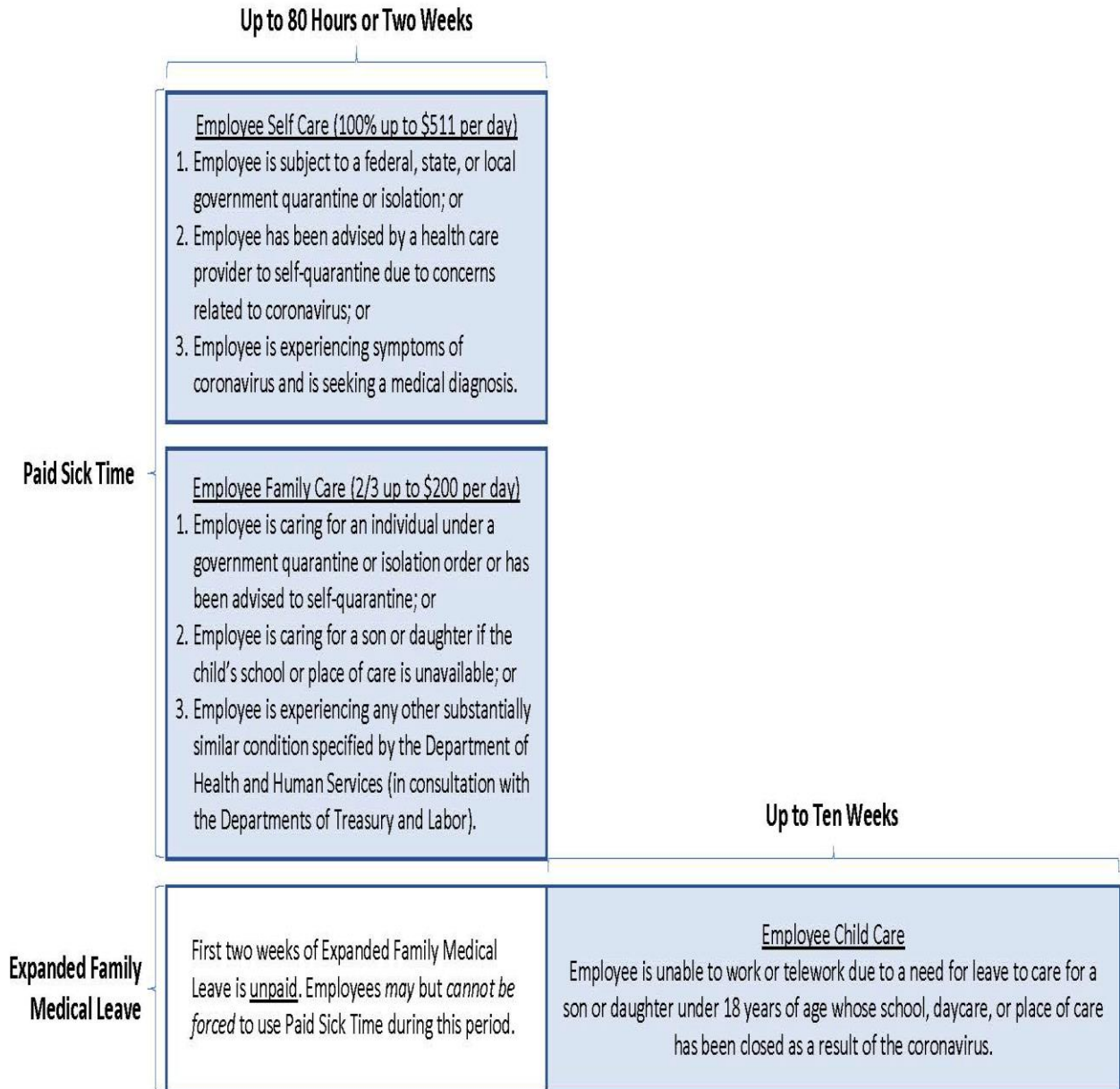


Figure 1: Chart Showing FFCRA Paid Leave Provisions



There is an exemption from *some* of the paid leave provisions (the childcare leave provisions) in the FFCRA for *some* employers with fewer than 50 employees (using the same employee counting methodology explained in question 1). However, key paid leave provisions do apply to employers with fewer than 50 employees.

An employer with fewer than 50 employees (small business) is exempt only if:

- i. leave is requested because the child's school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons; and
- ii. an authorized officer of the business has determined that:
 - The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity; or
 - The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
 - There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

3. My company is covered. What do we need to do now? Do we need to notify our employees?

A. The FFCRA requires employers to post a notice – a poster specified by the Department of Labor – in the location where other employee notices (i.e. other employee notice posters) are normally posted. [Click here to download the poster.](#) [Click here to review FAQs about the workplace Poster.](#)

4. When does FFCRA paid leave apply? A. The FFCRA's paid leave provisions are effective on April 1, 2020 and apply to leave taken between April 1, 2020 and December 31, 2020.

5. Which employees are eligible for FFCRA paid leave? A. Employees are eligible for paid sick time regardless of how long they have been employed. However, only for expanded family medical leave, employees must have been employed for at least 30 calendar days immediately prior to the day on which leave would begin. Note that some employees who were laid off and then rehired during that 30 day period will be eligible. Specifically, an employee is considered to have been "employed for at least 30 calendar days" if he/she was laid off by the employer on or after March 1, 2020, had worked for the employer for at least 30 of the 60 days prior to the layoff, and was subsequently rehired by the employer.

The FFCRA paid leave provisions are not retroactive. Employees who were laid off prior to April 1st and have not been rehired are generally not eligible for FFCRA paid leave.

Note also that employees receiving FFCRA paid leave remain employees – they are not eligible for unemployment insurance.

Employees who are laid off or furloughed for lack of work (for example, upon completion of a project) on or after April 1st are similarly not eligible for FFCRA paid leave. Only employees who remain employed and are eligible for leave for a reason described by the FFCRA will receive FFCRA paid leave.

Employees not eligible for FFCRA paid leave may be eligible for unemployment benefits pursuant to state law. Note that enhanced unemployment benefits may be available to the employee due to the COVID-19 outbreak. Employees with questions about unemployment benefits should be referred to the state unemployment insurance office or workforce agency.

For purposes of expanded family medical leave, who is a son or daughter? A. A “son or daughter” is the employee’s own minor child, including biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom the employee has day-to-day responsibilities to care for or financially support (standing in loco parentis). It includes an adult child who 1) has a mental or physical disability, and 2) is incapable of self-care because of that disability.

Questions About How to Calculate Paid Sick Time and Expanded Family and Medical Leave Pay

1. What rate do I pay the employee for FFCRA paid leave? A. The calculation (either 100% or 66.6%) is based on the employee’s regular rate as defined by the Fair Labor Standards Act.

These calculations do not include a contribution to a vacation plan, which is unique because those amounts, while taxable, are paid to a Taft-Hartley fund that holds the contributions and later releases payments to participants. Keep in mind that savings plans – where contributions are withheld from the employees pay and flow through to a credit union and are immediately available to the employee – are included in the regular rate. Where employees have a savings plan but not a vacation plan, the regular rate will typically be the employee’s taxable gross.

The calculation of the specific rate as a dollar figure requires the employer to look back up to six months to determine the average rate paid the employee over that period. If the employee’s rate hasn’t changed during the past six months, it’s an easy calculation. If the employee’s rate has changed over the past six months, you can calculate the average by determining total compensation paid over the past six months and dividing that figure by the number of hours the employee worked over the same period.

2. How many hours should I pay an employee who is using FFCRA paid leave? A. FFCRA paid leave is based on the average number of work hours for an employee – the hours they are normally scheduled to work. If the employee doesn't work a regular schedule, you may use a six-month average to calculate average daily hours. Note that the calculation of average daily hours includes overtime hours if the employee is normally scheduled to work overtime.

As noted above, paid sick time is limited to two weeks or 80 hours and \$511 per day or \$5,110 in the aggregate. Thus, if an employee is normally scheduled to work 50 hours per week, the employee is entitled to 50 hours in week one and 30 hours in week two.

Expanded family medical leave is also based on average daily hours but does not have a maximum number of hours. However, it maxes out at \$200 per day or \$10,000 in the aggregate and is available for up to 10 weeks.

3. Does paid leave include fringes? A. While an employee is taking paid sick leave or expanded family and medical leave, an employer must maintain the employee's group health coverage. Depending on the terms of the applicable health and welfare plan *this may require ongoing contributions to the health and welfare plan*. An agreement with the union, or a participation agreement with the benefit plan, may be required. Employers should work with the employer association and the applicable health and welfare plan on these issues. Employers are reimbursed 100% for Taft-Hartley health plan contributions made pursuant to FFCRA paid leave through the tax credit mechanisms.

FFCRA paid leave does not include contributions to other fringe funds such as pension, training, or industry fund contributions. An employer generally may make those contributions voluntarily but will not receive tax credit reimbursement for those amounts.

4. Are the health fund contributions included in the maximum amounts, or above and beyond the maximums? Health fund contributions are *added to (i.e. are over and above) the \$511/\$200 maximums*. This is the case both for paid sick time and expanded family and medical leave.

The FFCRA does not include other fringe contributions. If those contributions are made by the employer for any reason, they will not be reimbursed by the tax credit.

5. How are payroll taxes handled on FFCRA paid leave? A. The employer's share of social security tax is not owed on FFCRA paid leave. The employer's share of Medicare tax is owed on FFCRA paid leave, but it is 100% reimbursable. The employee's share of social security and Medicare taxes must be withheld on the qualified leave wages paid. Employers should also withhold federal employment taxes on the taxable portion of FFCRA paid leave.