



**Emergency Paid Sick Leave and Emergency Family Leave
in response to COVID-19
*as established in the “Families First Coronavirus Response Act”***

**Overview
Summary Chart
Q&As**

Current as of 3/25/2020

Important: *The Families First Coronavirus Response Act (FFCRA) was signed into law on March 18, and goes into effect on April 1, 2020. At this time, we are waiting for the Department of Labor to issue regulations fleshing out many details related to the law; in addition, Congress is currently debating potential changes to the FFCRA. These FAQs reflect the information available on March 25, 2020 and will be updated as new information becomes*

Please contact Colleen Meiman at cmeiman@nachc.org with questions.



**Emergency Paid Sick Leave and Emergency Family Medical Leave
in response to COVID-19
*as established in the “Families First Coronavirus Response Act”***

OVERVIEW

Current as of 3/25/2020

- The Families First Coronavirus Response Act (FFCRA), signed into law on March 18, created two new types of paid leave for workers impacted by COVID-19: Emergency Paid Sick Leave and Emergency Family and Medical Leave.
- In general, all employers with fewer than 500 employees are required to make these types of leave available to their employees.
- While **employers are required pay their employees for these types of leave, they are eligible for reimbursement up to the maximum amount allowable for each employee.** Reimbursement will be made **in the form of refundable tax credits on the employer share of Social Security payroll taxes.**
 - NACHC is currently researching the time lag between when a health center would need to pay an employee for mandatory leave, and when they would receive the financial benefit of the refundable tax credits.
- There are caps on both:
 - How many days of each type of leave an employee can take, and
 - How much an employee can be paid per day.

Specifically:

- Emergency Paid Sick Leave: Employees can take up to 10 days of Emergency Paid Sick Leave. If they are sick or under quarantine themselves, the maximum daily payment is \$511; if they are caring for a family member, the maximum daily payment is \$200.
- Emergency Family Leave: Employees can take up to 12 weeks of Emergency Family Leave – but only if they are caring for a child whose school or childcare is closed, and they are unable to telework. The first two weeks are unpaid, and the maximum daily payment is \$200 for the remaining 10 weeks.

Mandatory Paid Leave Under Families First Coronavirus Response Act
Current as of 3/25/2020

		Emergency Paid Sick Leave	Emergency Family Medical Leave	
Which EMPLOYERS must offer this leave		All employers with fewer than 500 employees		
Which EMPLOYEES are eligible:		Employees who are sick or under quarantine themselves	Employees who are caring for a family member or child who is sick, quarantined, or whose school/ childcare is closed	Employees who have a child under 18 whose school or childcare is closed <u>AND</u> who are unable to telework.
	Minimum tenure to be eligible	No minimum	No minimum	30 days
MAXIMUM days and dollar amounts (that employers must provide and the Federal government will reimburse)				
	Maximum number of days	10 days (for a full-time FTE)	10 days (for a full-time FTE)	12 weeks
	Maximum amount per day	The lesser of \$511 or the employee's regular daily rate	The lesser of \$200 or two-thirds of the employee's daily rate	The first 10 days may be unpaid (or employee may choose to use other types of leave.) For the remaining 50 days, maximum is the lesser of \$200 or two-thirds of the employee's daily rate
	Maximum Total Amount	\$5,110	\$2,000	\$10,000
Potential EXCEPTIONS				
	Employers	US Dept. of Labor may exempt some employers with less than 50 FTE		
	Health care employees	Employers can choose to deny emergency sick leave to health care employees (but not other employees).	Both employers and the US Dept of Labor can choose to deny this FML to health care employees.	
How employers get REIMBURSED		Employers receive a refundable tax credit equal to 100% of the eligible leave costs described above. The tax credit is applied against an employer's total portion of Social Security taxes for the period, and is refundable.		



**Emergency Paid Sick Leave and Emergency Family Leave
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EMPLOYERS TO WHOM FFCRA APPLIES

1. Which employers are required to provide Emergency Leave, as established under FFCRA, to eligible employees?

FFCRA applies to all private employers with fewer than 500 employees, and all public employers, with some potential exceptions for employers with less than 50 employees. (See following question.) FFCRA contains no requirements for employers with more than 500 employees.

2. Our health center/PCA/HCCN has less than 50 FTE. Could we be exempted from the FFCRA requirements?

Employers with less than 50 employees will be eligible to apply for an exception for most, but not all, FFCRA Emergency Leave requirements. The statute states that “when the imposition of such requirements would jeopardize the viability of the business as a going concern”, the Secretary of Labor may exempt these employers from the requirements to provide:

- Emergency Family Medical Leave
- Emergency Paid Sick Leave for individuals who are not sick or quarantined themselves, but whose child’s school or childcare is closed due to COVID-19 precautions.

However, DOL may not exempt any employers – regardless of size -- from the requirement to pay Emergency Paid Sick Leave for employees who are sick or quarantined themselves.

The Department of Labor (DOL) has stated that it will outline the criteria and process for applying for this exemption in the forthcoming regulation.

3. How should we count our staff to determine if we fall above the 500-employee or below the 50-employee threshold?

The [Department of Labor FAQs](#), published on March 25, provide guidance on how to count employees for purposes of FFCRA eligibility. (See FAQ #2.)

4. We have read that health care providers may be exempted from certain FFCRA requirements and protections. Do those exemptions apply to organizations, or to individual employees?

The potential exemptions for “health care providers” apply to individual employees, not organizations¹. Specifically, a health care organization with less than 500 employees may choose to deny FFCRA Emergency Leave to its clinicians; however, it may not deny Emergency Leave to its non-clinical staff.

¹ For example, Section 5102(a), which discusses Emergency Paid Sick Leave, reads: “an employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this subsection.”

EFFECTIVE DATE & RETROACTIVITY

5. When do FFCRA requirements to provide Emergency Leave go into effect?

On March 25, the [Department of Labor announced](#) that the new requirements would become effective on April 1, 2020. FFCRA will apply to leave taken between April 1, 2020, and December 31, 2020.

6. Can employees receive Emergency Leave under FFCRA for leave taken prior to April 1, 2020?

No. On March 25, the [Department of Labor announced](#) that the Emergency Leave provisions do not apply retroactively.

TYPES OF EMERGENCY LEAVE UNDER FFCRA

7. What types of emergency leave are created under FFCRA?

FFCRA created the following types of emergency leave in response to the COVID-19 pandemic:

- Emergency Paid Sick Leave: Employees can take up to 10 days of Emergency Paid Sick Leave. Within EPSL, there are two categories:
 - ***For employees who are sick or quarantined themselves.*** For these individuals, the maximum daily payment is \$511.
 - ***For employees who are healthy but caring for a family member.*** For these individuals, the maximum daily payment is \$200.
- Emergency Family Leave: Employees can take up to 12 weeks of Emergency Family Leave – but only if they are caring for a child under age 18 whose school or childcare is closed, and they are unable to telework. The Federal government pays nothing (through the employer) for the first two weeks; for the remaining 10 weeks, the maximum payment is \$200 per day. (Total \$10,000.)

Details on both leave types are provided below.

PAYMENT FOR FFCRA EMERGENCY LEAVE

8. Who pays eligible employees directly for their Emergency Leave?

FFCRA requires employers to pay their eligible employees for the Emergency Leave they take, up to the maximum amount allowed under the law. However, employers will be

reimbursed for these expenses in the form of refundable tax credits on the Social Security payroll taxes.

9. Who ultimately “foots the bill” for Emergency Leave mandated under FFCRA?

Ultimately, the Federal government will pay the full cost of both Emergency Paid Sick Leave and Emergency Family Medical Leave. While employers are required to pay employees “upfront” for their Emergency Leave, once they calculate the amount of spent on FFCRA-mandated Emergency Leave, they can offset the company's FICA taxes when they submit their payroll taxes.

EMERGENCY PAID SICK LEAVE

10. We have heard that there are two types of Emergency Paid Sick Leave under FFCRA. What are they?

There are different rules for FFCRA Emergency Paid Sick Leave depending on why the employee is unable to work. FFCRA divides employees taking this Emergency Paid Sick Leave into two categories:

- Employees who take Emergency Paid Sick Leave because they:
 - are subject to a state, local or federal quarantine, or
 - have been advised by a health care provider to self-quarantine; or
 - are experiencing symptoms of COVID-19 and seeking a medical diagnosis

- Employees who taking paid Emergency Paid Sick Leave to:
 - care for an individual subject to a federal, state or local quarantine or isolation;
 - care for a child whose school/place of care is closed or whose care provider is unavailable; or
 - deal with a "substantially similar condition" (to be defined by the Department of Labor.)

For ease of reference, these FAQs refer to the first group as “sick or quarantined employees” and second group as “employees with family responsibilities.”

11. How many days of Emergency Paid Sick Leave can a full-time employee receive?

All eligible employees can receive up to ten days of Emergency Paid Sick Leave, regardless of whether they fall in the “sick or quarantined” category or the “family responsibilities” category.

12. How much does an employee receive per day of Emergency Paid Sick Leave?

It depends on which category the employee is in. Specifically:

- “Sick or quarantined” employees receive the lesser of \$511 or their regular daily rate.
- “Family responsibilities” employees receive the lesser of \$200 or two-thirds of their daily rate.

Since employees are eligible for a maximum of ten days of Emergency Paid Sick Leave, the maximum payment is \$5,110 for “sick or quarantined” employees (\$511 x 10), and \$2,000 for “family responsibilities” employees (\$200 x 10.)

13. How should we calculate the “daily rate” for hourly employees?

For hourly employees, their daily rate should equal the average number of hours that the employee was scheduled per day over the six-month period prior to the leave.

14. How should we calculate the “daily rate” for part-time employees?

For a part-time employee, the daily rate should reflect the number of hours that the employee works on average in a two-week period.

15. Can an employee receive take 10 days of Emergency Paid Sick Leave for “family responsibilities”, and later take an additional 10 days if they become sick or quarantined themselves?

No. Each employee is entitled to no more than 10 days of Emergency Paid Sick Leave, regardless of the circumstances. For more information, see #9 in the [Department of Labor FAQs](#), published on March 25.

16. Can an employer require an employee to take earned sick leave before taking FFCRA Emergency Paid Sick Leave?

No. FFCRA explicitly prohibits an employer from requiring an employee to use the paid leave provided as a benefit by the employer before using Emergency Paid Sick Leave provided under FFCRA.

17. If an employee took regular paid sick leave for COVID-related reasons prior to April 1, 2020, can the employer deny him Emergency Paid Sick Leave?

No. For more information, see #11 in the [Department of Labor FAQs](#), published on March 25.

18. How long must an employee have worked for us to be eligible for Emergency Paid Sick Leave?

There is no minimum tenure for employees to be eligible for Emergency Paid Sick Leave. For more information, see #14 in the [Department of Labor FAQs](#), published on March 25.

EMERGENCY FAMILY LEAVE

19. FFCRA expanded the Family and Medical Leave Act of 1993. Is the new FFCRA leave structured similarly to FMLA leave?

There are key differences between traditional FMLA and FFCRA’s “Emergency Family Leave”. These include, but are not limited to:

- Which employers must offer it: While the Family and Medical Leave Act of 1993 applies to employers with 50 or more FTE, the FFCRA requirement to provide EFML applies to all employers with 500 FTE or fewer. However, as discussed in the FAQ below, the Department of Labor may choose to exempt employers with less than 50 FTEs.
- Federal government reimburses employers up to capped amount. There is no Federal reimbursement for traditional FMLA leave.
- Applies only to family leave for a minor -- not medical leave for an employee or family member. Employees are eligible for emergency “Family and Medical Leave” only when they:
 - Have a child under age 18 whose school or childcare is closed due to COVID -19
AND
 - Are unable to telework.

Because this type of FFCRA leave does not cover medical issues (of either the employee or a family member), it may be helpful to think of it simply as “Emergency Family Leave”, without referencing “medical leave.”

20. Did FFCRA expand family leave, medical leave, or both?

FFCRA expanded ***only family leave*** -- and only for employees who:

- have a child under age 18 whose school or childcare is closed due to COVID -19
AND
- are unable to telework.

So unlike FMLA, this leave is not available for employees:

- To care for a child or other family member over age 18
- For medical reasons of the employee or a family member.

Because this type of FFCRA leave does not cover medical issues (of either the employee or a family member), it may be helpful to think of it simply as “Emergency Family Leave”, without referencing “medical leave.”

21. What’s the difference between “medical leave” and “paid sick days”?

“Medical leave” is a term used in the FMLA to refer to extended (unpaid) leave to deal with a personal health issue, or a health issue of a family member. FMLA grants 12 weeks of medical leave to qualifying individuals. “Paid sick days” generally refers to a shorter period of time, during which an employee is paid.

FFCRA provided for 10 days of Emergency Paid Sick Leave, but no extended “medical leave” in the FMLA sense.

22. How many days of Emergency Family Leave are allowed under FFCRA?

FFCRA allows for 12 weeks of Emergency Family Leave.

23. Will employees be paid while on Emergency Family Leave? If so, how much can they receive?

The Federal will provide no payment for the first 10 days of an employee's Emergency Family Leave. (However, as discussed below, the employee may choose to use other forms of paid leave during this time.) For the remaining 50 days, the maximum amount that the employee may receive is the lesser of \$200 or two-thirds of the employee's daily rate.

24. If an employee is eligible for Emergency Family Leave, must they go without pay for the first ten days? Or can they use other forms of leave to receive payment for those days?

As noted above, the FFCRA does not provide for payment for employees for their first ten days of EFML. However, employees have the option to use any other leave for which they are eligible – including paid sick leave under FFCRA, or paid vacation leave, personal leave, or sick leave that they have accrued with their employer – for any or all of those first ten days.

25. Can an employer require an employee to take their earned leave before taking FFCRA Emergency Family Leave?

Unlike with Emergency Paid Sick Leave, FFCRA does not explicitly prohibit employers from requiring employees to use their earned leave prior to using FFCRA Emergency Family Leave.

26. How long must an employee have worked for us to be eligible for Emergency Family Leave?

An employee must have worked for the employer for at least 30 days to be eligible for Emergency Family Leave. (This is another difference from traditional FMLA, which requires a minimum 12-month tenure.)

27. Our health center/ PCA/ HCCN has less than 50 employees, so we are exempt from the Family Medical Leave Act of 1993. Are we required to provide Emergency Family Medical Leave under FFCRA?

At present, yes. While the Family and Medical Leave Act of 1993 applied to employers with 50 or more FTE, the FFCRA requirement to provide EFML applies to all employers with 500 FTE or fewer.

However, it is important to note that when the U.S. Department of Labor publishes FFCRA regulations (expected not later than April 2, 2020), it may choose to exempt employers with less than 50 employees from the requirement to offer EFML “when the imposition of such requirements would jeopardize the viability of the business as a going concern”:

MISCELLANEOUS

28. How do we determine the “regular rate of pay” for employees, including those who work part-time or overtime, etc.?

See questions #5, #6, and #8 in the [Department of Labor FAQs](#), published on March 25.

29. What type of documentation are employees required to submit to demonstrate that they are eligible for Emergency Leave?

This information has not yet been specified. It will likely be outlined in the regulations that the Department of Labor is expected to publish not later than April 2, 2020.

30. Does FFCRA contain anti-discrimination protections for employees?

Yes. Employers are prohibited from discharging, disciplining, or discriminating against employees who take FFCRA Emergency Leave, or who file a complaint or proceeding related to the benefits and protections provided by the Act. Employers who violate these requirements shall be subject to civil penalties under the FLSA.

31. We have read that FFCRA could allow the Federal government to force health care providers to work, even when they are sick. Is this true?

No. Unfortunately, there has been some confusion in the press (such as [this article](#)) leading to unfounded fears that the Federal government could force health care providers to work while they are sick. Here are the two ways in which the law treats individual health care providers differently from other employees:

- Emergency Paid Sick Leave (EPSL):
 - Employers with less than 500 employees are given the option – but are not required – to deny Emergency Paid Sick Leave to their health care employees.
 - The US Secretary of Labor is not authorized to deny Emergency Paid Sick Leave to health care employees.
- Emergency Family Leave:
 - Both the US Secretary of Labor² and employers with less than 500 employees have the option to deny Emergency Family Leave to health providers and emergency responders.
 - Note that Emergency Family Leave is not for when the employee is sick; rather, it is available only when an employee has a child under age 18 at home whose school or childcare is closed due to COVID-19 and is unable to telework. So, while healthcare workers could be denied emergency FMLA that other workers can receive, ***these provisions would never force health care workers to go to work while sick or exposed.***

Finally, note that the two types of Emergency Leave created under FFCRA only apply to employers with under 500 employees. So these provisions will have no direct impact on large hospitals and health systems, whose staffs are above 500 persons.

² Section 110(a)(3) of FFCRA reads in reference to Emergency Family Leave: “(3) REGULATORY AUTHORITIES.— The Secretary of Labor shall have the authority to issue regulations for good cause to...

“(A) to exclude certain health care providers and emergency responders from the definition of eligible employee”

32. Where can we get more information on Emergency Leave under FFCRA?

On March 25, the Department of Labor issued two Fact Sheets on FFCRA Emergency Leave:

- [Fact Sheet for Employees](#)
- [Fact Sheet for Employers !](#)