



# Comprehensive FCAI Employer/Employee COVID Resource Guide

What to do when an employee tests positive for COVID-19

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## Employer Paid Leave Requirements

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.<sup>[1]</sup> The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date through December 31, 2020.

Generally, the Act provides that covered employers must provide to all employees:<sup>[2]</sup>

- *Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay* where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

A covered employer must provide to employees that it has employed for at least 30 days:<sup>[3]</sup>

- *Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay* where an employee is unable to work due to a bona fide need for leave to care for a child whose school or childcare provider is closed or unavailable for reasons related to COVID-19.

### **Covered Employers:**

The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees.<sup>[4]</sup> Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

### **Qualifying Reasons for Leave:**

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19
2. has been advised by a health care provider to self-quarantine related to COVID-19
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.

### **Duration of Leave:**

For reasons (1)-(4) and (6): A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

For reason (5): A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

### **Calculation of Pay:<sup>[5]</sup>**

For leave reasons (1), (2), or (3): employees taking leave shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

For leave reasons (4) or (6): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

For leave reason (5): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).[6]

**Tax Credits:** Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage. For more information, please see the Department of the Treasury’s website.

**Employer Notice:** Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements.[7]

**Prohibitions:** Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA.

**Penalties and Enforcement:** Employers in violation of the first two weeks paid sick time or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act. 29 U.S.C. 216; 217. Employers in violation of the provisions providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or childcare provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act. The Department will observe a temporary period of non-enforcement for the first 30 days after the Act takes effect, so long as the employer has acted reasonably and in good faith to comply with the Act. For purposes of this non-enforcement position, “good faith” exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.

[1] Wage and Hour Division does not administer this aspect of the law but notes that every dollar of required paid leave (plus the cost of the employer’s health insurance premiums during leave) will be 100% covered by a dollar-for-dollar refundable tax credit available to the employer. For more information, please see the Department of the Treasury’s website.

[2] Employers of Health Care Providers or Emergency Responders may elect to exclude such employees from eligibility for the leave provided under the Act.

[3] Employers of Health Care Providers or Emergency Responders may elect to exclude such employees from eligibility for the leave provided under the Act.

[4] Certain provisions may not apply to certain employers with fewer than 50 employees. See Department FFCRA regulations (expected April 2020).

[5] Paid sick time provided under this Act does not carry over from one year to the next. Employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement, or other separation from employment.

[6] An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave under this section.

## Employee Paid Leave Requirements

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date through December 31, 2020.

Generally, the Act provides that employees of covered employers are eligible for:

- *Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay* where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and
- *Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay* where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or childcare provider is closed or unavailable for reasons related to COVID-19.

**Covered Employers:** The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees.<sup>[1]</sup> Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

**Eligible Employees:** *All employees* of covered employers are eligible for two weeks of paid sick time for specified reasons related to COVID-19. *Employees employed for at least 30 days* are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19.[2]

**Notice:** Where leave is foreseeable, an employee should provide notice of leave to the employer as is practicable. After the first workday of paid sick time, an employer may require employees to follow reasonable notice procedures in order to continue receiving paid sick time.

**Qualifying Reasons for Leave:**

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

7. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19
8. has been advised by a health care provider to self-quarantine related to COVID-19
9. is experiencing COVID-19 symptoms and is seeking a medical diagnosis
10. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
11. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
12. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.

**Duration of Leave:**

For reasons (1)-(4) and (6): A full-time employee is eligible for 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

For reason (5): A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical leave) at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

**Calculation of Pay:[3]**

For leave reasons (1), (2), or (3): employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

For leave reasons (4) or (6): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

For leave reason (5): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period). [\[4\]](#)

[\[1\]](#) Certain provisions may not apply to certain employers with fewer than 50 employees. See Department FFCRA regulations (expected April 2020).

[\[2\]](#) Under the Act, special rules apply for Health Care Providers and Emergency Responders.

[\[3\]](#) Paid sick time provided under this Act does not carryover from one year to the next. Employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement, or other separation from employment.

[\[4\]](#) An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave under this section.

## Payroll Tax Credit Information

If you have PDC #30 employees who are currently utilizing the COVID-19 FFCRA two-week paid sick leave or the 10-weeks of additional paid expanded family and medical leave, not only will you be fully reimbursed for those employee wages, but also some benefits. FCAI suggests that contractor members continue to contribute into the PDC #30 Health and Welfare fund on their employee's behalf, while on leave, since employers will be reimbursed for that contribution through weekly payroll tax credits.

The purpose of continuing to contribute on the employee's behalf to the PDC #30 Health and Welfare fund is so the employee(s) will maintain health insurance coverage during their FFCRA sick leave. FCAI employers will receive a full refund/100% tax payroll credit for this paid leave in accordance with FFCRA. FCAI is also asking contractors to notify the PDC #30 Benefits Office or the District Council when they're made aware of positive Coronavirus tests among their employees. FCAI Employers may contact Lisa Mills at [lmills@pdc30.com](mailto:lmills@pdc30.com) with questions regarding contribution remittance.

### **Two New COVID-19 Refundable Payroll Tax Credits**

The U.S. Treasury Department, Internal Revenue Service (IRS), and the U.S. Department of Labor (Labor) have announced that small and midsize employers can take advantage of two new refundable payroll tax credits, designed to immediately and fully reimburse them, dollar-for-dollar, for the cost of providing Coronavirus-related leave to their employees. This relief to employees and small and midsize businesses is provided under the Families First Coronavirus Response Act (Act), signed by President Trump on March 18, 2020. The Act will help the United States combat and defeat COVID-19 by giving all American businesses with fewer than 500 employees funds to provide employees with paid leave, either for the employee's own health needs or to care for family members. The legislation enables employers to keep their workers on their payrolls, while at the same time ensuring that workers are not forced to choose between their paychecks and the public health measures needed to combat the virus.

### **Key Takeaways**

#### *Paid Sick Leave for Workers*

For COVID-19 related reasons, employees receive up to 80 hours of paid sick leave and expanded paid childcare leave when employees' children's schools are closed, or childcare providers are unavailable.

#### *Complete Coverage*

Employers receive 100% reimbursement for paid leave pursuant to the Act. Health insurance costs are also included in the credit. Employers face no payroll tax liability. Self-employed individuals receive an equivalent credit.

### *Fast Funds*

Reimbursement will be quick and easy to obtain. An immediate dollar-for-dollar tax offset against payroll taxes will be provided. Where a refund is owed, the IRS will send the refund as quickly as possible.

### *Small Business Protection*

Employers with fewer than 50 employees are eligible for an exemption from the requirements to provide leave to care for a child whose school is closed, or childcare is unavailable in cases where the viability of the business is threatened.

### *Easing Compliance*

Requirements subject to 30-day non-enforcement period for good faith compliance efforts.

To take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form.

## **What to do When Your Employee Tests Positive for COVID-19**

With the constantly shifting state and local stay-at-home orders and the potential relaxing of these orders on the horizon, the question for employers remains: What do we do if an employee has COVID-19?

Once an employer receives a report that an employee has tested positive for or is presumed to have COVID-19, the employer should do the following:

### **Step 1**

Instruct the infected employee to stay home for the longer of the period recommended by his or her health care provider or the applicable health department or until:

1. at least 3 days (72 hours) have passed since resolution of fever without the use of fever-reducing medications AND improvement in respiratory symptoms (e.g., cough, shortness of breath); and
2. at least 7 days have passed since symptoms first appeared. Employers may not disclose the identity of the employee diagnosed with or presumed to have COVID-19.

Employers are also required to maintain the privacy of any health information they gather related to an employee's medical condition or their symptoms, and any such documentation should be kept in a private health folder, separate from the employee's personnel file, with limited access by only critical human resource staff.

### **Step 2**

Interview the infected employee to determine all co-workers, clients, vendors, or guests with whom the employee may have come into close contact during the 14-day period prior to the positive test or presumption of being positive for COVID-19 (the "Incubation Period").

"Close contact" means being within six feet of the sick employee for a prolonged period (10-30 minutes). The employee should also be asked to identify all areas within the workplace where he or she was physically present during the past 14 days and any employees with whom he or she shared a workspace or equipment. (The local health department may conduct this interview and provide the employer with this information.)

### **Step 3**

Contact directly each close contact and each co-worker who shared a workspace with the sick employee and advise that a person with whom they have been in recent contact and/or with whom they recently shared a common work area has been diagnosed with COVID-19.

Instruct them that they are to remain out of the office for at least 14 days since the last contact with the infected employee and to work remotely, if possible.

The co-workers should be encouraged to self-isolate and seek all medical care and testing that they feel may be appropriate. (The local health department may order the employees to be off work and inform the employer that it has done so.)

It should also be noted that pursuant to recent CDC guidelines, under certain circumstances, an employer may allow an employee who is asymptomatic but was exposed to return to work.

#### **Step 4**

FCAI asks contractors to notify the PDC #30 Benefits Office or the District Council when they're made aware of positive coronavirus tests among their employees so that additional supports can be provided to the affected employee(s) as soon as possible. These include weekly disability benefits that may be available from the PDC #30 Health & Welfare Fund and information about the PDC 30 COVID-19 Recovery Fund.

#### **Step 5**

Consider notifying clients, vendors and/or guests who may have been exposed to the diagnosed employee, while maintaining confidentiality.

#### **Step 6**

Consider the wage and hour issues, such as mandatory paid sick leave, if the infected employee and close contacts are not able to work remotely and communicate the pay policies to employees pursuant to the FFCRA.

#### **Step 7**

Consider issuing a general notice to the workforce that an employee has tested positive for or is presumed to have COVID-19 (without identifying the employee).

Any such notice should reassure employees that, unless the employee has been notified directly by the employer, the employee is not believed to have been in close contact with or shared a common workspace with the infected employee.

Employees should be told all the steps the employer is taking to ensure their safety and should be advised to monitor themselves for symptoms of COVID-19 and reminded not to come to work if they are sick.

#### **Step 8**

Shut down those areas of the workplace identified by the infected employee as areas that he or she used until those areas can be cleaned in accordance with CDC guidelines.

#### **Step 9**

Put the employee on the COVID-19 FFCRA two-week paid sick leave. If they qualify, after the two-week period, place them on the 10-weeks of additional paid expanded family and medical leave. Not only will you be fully reimbursed for those employee wages, but also some benefits.

FCAI suggests that contractor members continue to contribute into the PDC #30 Health and Welfare fund on their employee's behalf, while on leave, since employers will be reimbursed for that contribution through weekly payroll tax deductions. The purpose of continuing to contribute on the employee's behalf to the PDC #30 Health and Welfare fund is so the employee will maintain health insurance coverage during their FFCRA sick leave. FCAI employers will receive a full refund/100% tax credit for this paid leave in accordance with FFCRA.

### **Key Takeaways**

While employers may require a doctor's note permitting an employee to return to work after recovering from COVID-19 or being mandatorily quarantined, such a requirement may not be practical.

Acceptable alternatives include relying on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have COVID-19.

State, federal, and local discrimination laws remain in place and apply to harassment related to COVID-19, which may take the form of race and national origin harassment. Employers should inform all employees that such harassment will not be tolerated.

Employers should act immediately in response to an employee who reports a positive test for or a presumption of COVID-19. Employers should be flexible and efficient in order to maintain a safe workplace and allow the focus to be on the work of the company going forward.

### **For Additional Resources:**

Visit <http://www.fcaofillinois.org/covid19> or call the FCAI Office at 630-264-7880.