

# FIRST SUPPLY®

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## COVID-19 Employer Obligations

Paid Leave under the FFCRA  
Confidentiality under the ADA

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## Agenda

1. FFCRA Background
2. Paid Leave
  - Which employers must provide paid leave
  - For what situations do employees get paid leave
  - How much leave and how much pay
  - Small Business Exemptions
  - Paid leave requests
3. Do Not Retaliate
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## FFCRA Background

***Nutshell:*** requires some employers to provide paid leave to employees affected by COVID-19.

Effective April 1 – December 31.

- You do not have to backpay employees for leave they took before April 1.
- You do not need to provide paid leave for employees whom you layoff or furlough during this period.

The 2<sup>nd</sup> of 3 federal laws providing relief to Americans.

## Paid Leave

Which employers must provide paid leave?

	1 – 49 employees	50 – 499 employees	500 or more employees
Emergency Paid Sick Leave (EPSL)	YES but Small Business Exemptions may apply	YES	No leave required
Emergency Family and Medical Leave (EFMLA)	YES but Small Business Exemptions may apply	YES	No leave required

- Full time, part time, and temporary employees count as 1 employee
- Must count employees who are currently out on other leave (e.g. maternity) but do not count laid off or furloughed employees
- The EPSL and EFMLA leave is in addition to PTO you already provide employees

## Emergency Paid Sick Leave (EPSL)

<b>Reason for Leave</b> Employer has work for the employee, but employee is unable to work onsite or from home because...	<b>How Much Leave</b>	<b>How Much Pay</b>
Employee is 1) subject to a government isolation order, 2) advised by health care provider to self-isolate, or 3) experiencing COVID-19 symptoms and is seeking a medical diagnosis	<p><b>Full time employees:</b> up to 80 hours over a two week period.</p> <p><b>Part time employees:</b> up to the average number of hours they work over a two week period</p>	Employee's regular pay rate  Capped at \$511.00/day, or \$5,110.00 total
Employee is caring for someone who 4) is subject to a government isolation order, or 5) advised by a health care provider to self-isolate	See above	2/3 the regular pay rate  Capped at \$200/day, or \$2,000 total
6) Employee must care for <u>his/her</u> child because school or child care unavailable due to COVID-19 <i>Small business exemption may apply</i>	See above	2/3 the regular pay rate  Capped at \$200/day, or \$2,000 total

## Emergency Family and Medical Leave (EFMLA)

Reason for Leave	How Much Leave	How Much Pay
<p>Employee has been employed for at least 30 days, employer has work for the employee, but employee is unable to work onsite or at home because s/he must care for <u>his/her</u> child because school or childcare is unavailable due to COVID-19</p> <p><i>Small business exemption may apply</i></p>	<p><b>Full and Part time employees:</b> Up to 12 weeks</p> <p>The EFMLA provides an additional reason to take FMLA. It does not provide an additional 12 weeks of leave.</p>	<p><b>First 2 weeks – unpaid</b> No minimum employment period. All employees are eligible.</p> <p>Employee may choose to use the paid EPSL leave or other PTO under your benefits package, but you cannot make them.</p> <p><b>Following 10 weeks – paid</b> 2/3 the regular pay rate Capped at \$200/day, or \$10,000 total</p> <p>Employee may choose to use the PTO under your benefits package, but you cannot make them.</p>

## Small Business Exemptions

	1 – 25 employees	1 – 49 employees	50+ employees
<p>Employee requests <b>EPSL</b> or <b>EFMLA</b> leave to</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> to care for his/her child because school or childcare is unavailable</li> </ul> <p style="text-align: center;">and</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> allowing the leave would cause <u>one</u> of these scenarios           <ul style="list-style-type: none"> <li>▪ the business’s expenses will exceed its revenue and cause the business to cease operating at minimal capacity</li> <li>▪ employee requesting childcare leave has specialized skills, business knowledge, or responsibilities so their absence would substantially risk the business’s financial health or ability to operate</li> <li>▪ an insufficient number of able, willing, and qualified employees remain at the time and place needed to cover the absent employee’s job duties and the performance of these duties are necessary for the business to operate at minimal capacity.</li> </ul> </li> </ul>	<p>Okay to Deny Childcare Leave</p>	<p>Okay to Deny Childcare Leave</p>	<p>Must Provide Childcare Leave</p>
<p>Employee takes <b>EFMLA</b> leave</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> while the employee is on leave their position is eliminated due to economic or operating conditions caused by COVID-19</li> <li><input type="checkbox"/> you make reasonable efforts to find the employee an equivalent position (e.g. benefits, pay), and</li> <li><input type="checkbox"/> if no equivalent position exists, you contact the employee if one becomes available in the future</li> </ul>	<p>Do Not Need to Restore the Employee to the Same Position</p>	<p>Must Restore the Employee to the Same or Equivalent Position</p>	<p>Must Restore the Employee to the Same or Equivalent Position</p>

## Small Business Exemptions

There is no need to get approval or send in a form to use the small business exemptions.

May be cited by the Department of Labor if an employee files a complaint and an investigation determines you willfully and wrongfully claimed the exemption.



## Paid Leave Requests

### Employee Obligations

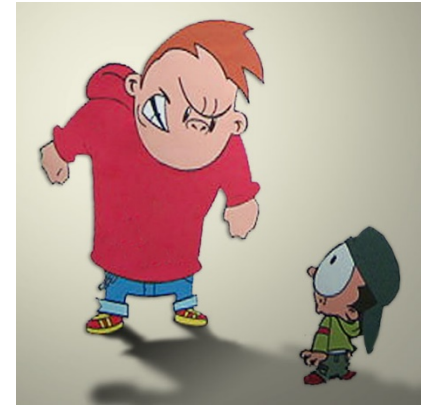
1. Provide as much notice as possible
2. Request must be in writing
  - a. Employee's name
  - b. The leave dates
  - c. The reason for leave
  - d. A statement that they are unable to work onsite or remotely.
  - e. Name of the gov't agency that issued the isolation order
  - f. Name of the health care provider that advised isolation
  - g. Name of the person they are caring for and the name of the gov't agency or health care provider that ordered isolation
  - h. Name and age of child, name of unavailable school or childcare provider, and a statement that no other suitable person is available to care for the child.
  - i. If the child is older than 14 years, a statement that special circumstances exist requiring the employee to provide care.

as applicable

### Employer Obligations

1. Retain for 4 years documents
  - a. provided by employee to support their leave request
  - b. used to calculate the amount of paid leave to employees
  - c. used to calculate the amount of qualified health plan expenses allocated to wages
2. You may not require the employee to find someone to cover their job duties while they're out

## Do Not Retaliate



Watch your attitude!

Create a paper trail to justify your decisions.

If you take negative action against an employee who took **EPSL** or **EFMLA** leave, they may file a retaliation claim against you.

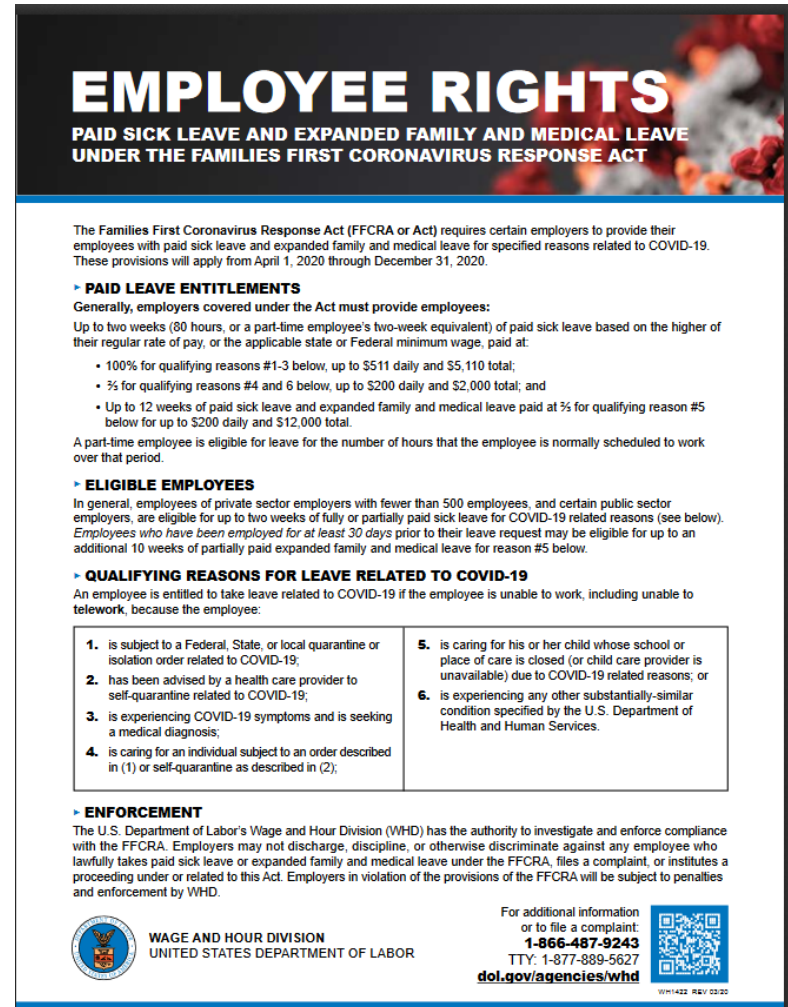
***Examples of negative action:*** reduce pay or benefits, terminate, demote, decline to promote, give worse assignments or shifts, treat them poorly, or allow others to do so.

## Poster

You must hang the FFCRA poster in a central location. May also distribute to employees.

Print free poster from the Dept of Labor's website.

[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

The poster features a dark header with the title 'EMPLOYEE RIGHTS' in large white letters, followed by 'PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT' in smaller white text. The background of the header shows a close-up of red flowers. The main body of the poster is white with black text. It includes sections for 'PAID LEAVE ENTITLEMENTS', 'ELIGIBLE EMPLOYEES', and 'QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19'. A table lists six specific reasons for leave. At the bottom, there is an 'ENFORCEMENT' section, the Department of Labor logo, contact information, and a QR code.

## EMPLOYEE RIGHTS

### PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

► **PAID LEAVE ENTITLEMENTS**  
Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.


A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

► **ELIGIBLE EMPLOYEES**  
In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.


► **QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19**  
An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

<ol style="list-style-type: none"><li>1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;</li><li>2. has been advised by a health care provider to self-quarantine related to COVID-19;</li><li>3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;</li><li>4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);</li></ol>	<ol style="list-style-type: none"><li>5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or</li><li>6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.</li></ol>
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► **ENFORCEMENT**  
The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

 **WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

For additional information or to file a complaint:  
**1-866-487-9243**  
TTY: 1-877-889-5627  
[dol.gov/agencies/whd](https://dol.gov/agencies/whd)



WH1422 REV 03/20



## Tax Credits

Contact your accountant.

If you provide paid leave, you may qualify for refundable tax credits.

Tax credits are subject to caps.

[https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faq#how to claim](https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faq#how_to_claim)



## Confidentiality

HIPAA Health care and health insurance providers

1. May share positive COVID-19 status with public health authorities
2. May not share information with the media
3. May not share information with the employer

ADA (Americans with Disabilities Act) Employers

1. May ask employees about their travel history, their exposure to COVID-19, and whether they're experiencing COVID-19 symptoms.
2. May take employees' temperature within certain perimeters
  - Results of 1 and 2 must be kept confidential and placed in a file that is separate from the employee's personnel file.
3. May ask a positive COVID-19 employee about the contact they had with people and places.
4. May alert those people of potential exposure to COVID-19.
5. May not share the name or defining characteristics of the tested employee.
6. Not required to alert the public health department about the tested employee.

## **Questions on FFCRA Paid Leave**

U.S. Department of Labor  
Wage and Hour Division

[www.dol.gov/agencies/whd](http://www.dol.gov/agencies/whd)

[WHD-COVID19@dol.gov](mailto:WHD-COVID19@dol.gov)

(866) 487-9243

## **Questions on ADA Health Disclosures**

U.S. Department of Labor  
Equal Employment  
Opportunity Commission

Small Business Liaison

<https://www.eeoc.gov/employers/contacts.cfm>

