

# Families First Coronavirus Response Act & Navigating COVID-19



# Informational and Educational Purposes

These slides are for educational and informational purposes only and not for the purpose of providing legal advice.



# Overview of FFCRA

## ***“Families First Coronavirus Response Act”***

*Division C – Emergency Family & Medical Leave Expansion Act*

*Division E – Emergency Paid Sick Leave Act*

*Division G – Tax Credits for Paid Sick and Paid Family & Medical Leave*



# WHEN – Effective Dates

- Takes effect April 1, 2020
  - NOT retroactive - Any leave that was granted BEFORE April 1 does not apply to the requirements under this law.
- Set to end on December 31, 2020

April 2020						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25



# WHO – *Which Employers?*

- All employers with fewer than 500 employees
  - Count full-time AND part-time, no matter where located
  - Count employees on leave

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



# WHO – *Which Employees?*

- Full-time *and* part-time *and* temporary
  - Eligibility periods
    - Employed at least 30 days for *Expanded Family and Medical Leave* component
    - No eligibility period for *Paid Sick Leave* component
- \* Special rules apply for Health Care Providers and First Responders.



# WHAT – Two Types of Leave

## Expanded Family and Medical Leave

- Only for leave to care for children whose school is closed or child care provider is unavailable
- Provides for a total of 12 weeks of protected leave
  - The first two weeks of this 12-week leave are unpaid under this provision, but can be covered by the **Paid Sick Leave** provision
  - After the first two weeks, the remaining 10 weeks of leave are paid at two-thirds of regular pay.
- Capped at \$200 per day / total of \$10,000 per employee

## Paid Sick Leave

- Two weeks (up to 80 hours) for full-time employees
- For part-time employees, based on average number of hours that employee works over a two-week period\*



# WHY an Employee Could Qualify

An employee qualifies if unable to work (or telework) because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order;
2. has been advised by a health care provider to self-quarantine;
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 child care provider is unavailable) 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.



# HOW MUCH – *It Depends*

If employee is taking Paid Sick Leave for himself / herself –

1. subject to a Federal, State, or local quarantine or isolation order
2. has been advised by a health care provider to self-quarantine
3. experiencing COVID-19 symptoms and is seeking a medical diagnosis

- would entitled to two weeks of pay (up to 80 hours)  
at 100% of their regular rate

Capped at \$511 per day / total of \$5,110 per employee.



If employee is taking Paid Sick Leave to care for others or has another similar condition --

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 child care provider is unavailable) 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.

- would be entitled to pay 2/3 of their regular rate

Capped at \$200 per day and \$2,000 total.



# Pay Calculation Example 1

A full-time employee whose child's school was closed for COVID 19-related reasons would be eligible for:

- **FFCRA's Expanded Family and Medical Leave** - a total of 12 weeks of leave, 10 of which are paid at two-thirds of regular pay under this provision

**AND**

- **FFCRA's Paid Sick Leave provision** - two weeks of pay at two-thirds of the regular rate of pay

**OR**

- Could choose to substitute previously-accrued PTO or other leave, which would presumably be at 100% of their pay.

\* Leave pay eligibility starts on or after April 1.



# Pay Calculation Example 2

A part-time employee who was hired March 2 to work 20 hours per week is exhibiting symptoms of COVID-19, but has not been able to be tested yet.

As of April 1, this employee would be eligible for:

- **FFCRA's Paid Sick Leave provision** - two weeks of pay (for a total of 40 hours) at 100% of the regular rate of pay

“An employee qualifies if unable to work (or telework) because the employee: ...(3) is experiencing COVID-19 symptoms and is seeking a medical diagnosis”

- NOT eligible for **FFCRA's Expanded Family and Medical Leave** because not the qualifying reason to care for children whose school is closed or child care provider is unavailable.



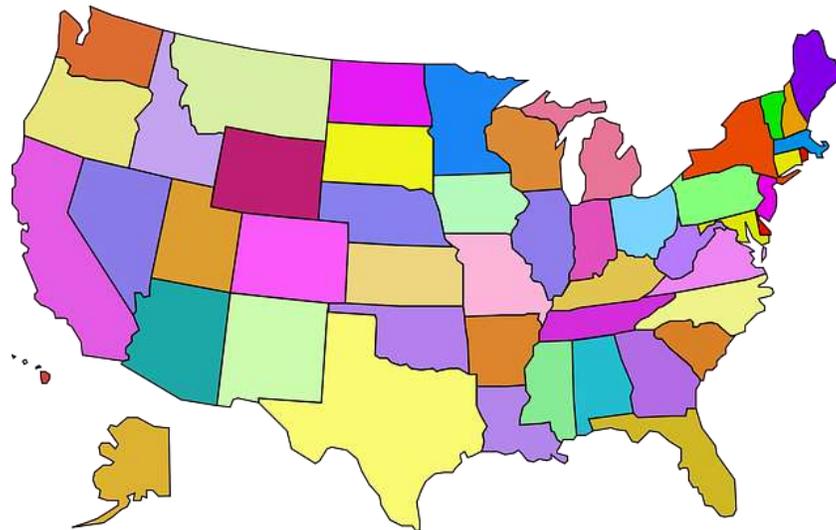
# HOW MUCH - Tax Credits

- Employers will receive 100% reimbursement in the form of payroll credits:
  - for all paid leave wages paid out
  - for certain health plan expenses associated with maintaining health coverage during leave
- All FFCRA leave payments are exempt from social security and Medicare withholdings for employee and employer.
- Self-employed individuals “unable to perform services in any trade or business” also eligible for tax credits for paid leave.



# WHERE Impacted

- FFCRA is a federal mandate, so it applies to all U.S. states and territories.
- \* Additional requirements may vary state-by-state.



# Application of *Americans with Disabilities Act*

- Regulates employers' disability-related inquiries and medical examinations for all applicants and employees
  - After conditional offer of employment or during employment
- Prohibits employers from excluding individuals with disabilities from the workplace for health or safety reasons unless they pose a "direct threat"
  - Based on guidance of the CDC and public health authorities, the COVID-19 pandemic does meet the direct threat standard.
- Requires reasonable accommodations for individuals with disabilities (absent undue hardship)
  - Including accommodations related to pandemic



# ADA-Compliant Employer Rights

Employers CAN:

- ask why an employee has not reported for work
- ask employees who report feeling ill questions about COVID-19-related symptoms including fever, chills, cough, shortness of breath, or sore throat
- measure employees' body temperature, if exhibiting other symptoms
- send home employees with COVID-19 or symptoms associated with it
- ask whether employees traveling from CDC-specified locations -- even if the travel was personal – to remain at home for several days until it is clear they do not have pandemic symptoms
- require infection control practices, such as regular hand washing, coughing and sneezing etiquette, proper tissue usage and disposal, and wearing personal protective equipment



# Not Allowed under ADA

Employers may NOT:

- divulge confidential medical information, including identifying someone who has tested positive for COVID-19
- make disability-related inquiries or requiring medical examinations of employees *without* symptoms present
  - If an employee voluntarily discloses a specific medical condition or disability that puts him or her at increased risk of complications, the employer may ask him to describe the type of assistance he thinks will be needed



# FFCRA Implementation

- FFCRA Notice to employees (If < 500)
  - Non-federal employees:  
[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)
  - Federal Employees:  
[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Federal.pdf)
- Pay exempt, salaried employees for any day they work anytime
- Continue tracking time worked for Non-exempt, hourly employees
- Create a FFCRA Policy & Follow it (Sample Available from HR Service)
- Communicate Supervisor's role
- Establish procedures within HR & Payroll
- Summary of Material Modification



## **FAMILIES FIRST CORONAVIRUS RESPONSE ACT POLICY**

[insert Company name] is committed to the safety of our employee, customers and general public and seek to minimize the negative impacts related to the coronavirus.

The Company will follow the requirements of the *Families First Coronavirus Response Act* (FFCRA) effective April 1, 2020 through December 31, 2020 or as directed by government agency(s) and/or law, including all federal, state, or local laws relevant to the FFCRA requirements, to the best of its ability.

This Policy covers all full-time and part-time employees of [insert Company name].

While management will work to ensure compliance with the FFCRA, employees are requested and expected to do their part to assist in working through the various provisions and keeping the Company informed of their need for possible assistance available under the FFCRA.

### **EXTENDED FAMILY & MEDICAL LEAVE ACT (EFMLA)**

Any employee who has worked for the Company for at least 30 calendar days is eligible to take up to 12 weeks of COVID-19 leave from their workplaces if the employee is unable to work (or telework) due to a need for leave to care for a son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency related to COVID-19.

The first 10 days of EFMLA are unpaid; then, the employee is entitled to receive 2/3 pay for the remaining 50 days, with a cap of \$200 per day and \$10,000 in the aggregate. The employee, at their discretion, may opt to use PTO, vacation, company-provided sick pay, or emergency sick pay (see below) as available to receive pay for the first 10 days.

Any FMLA time previously used by an employee during the Company's FMLA 12 month lookback period, or any FMLA time currently being used or used after April 1, 2020 for any other FMLA approved reason, will be deducted from the 12 weeks provided under EFMLA. EFMLA does not provide additional FMLA time above what is already mandated.

### **EMERGENCY PAID SICK LEAVE**

The FFCRA provides for Emergency Paid Sick Leave that varies, based on the status of the employee: 80 hours of pay for full time employees, and a pro-rated portion for part-time workers based on their average number of hours over a typical two-week period.

# Challenging Times for Employers

- Compliance with FFCRA – 4/1/20 Effective
- Business downturn and weakening economy
- Many employees forced to work remotely or temporarily shutdown
- Faced with furloughs or reductions in force



# Downturned Market Conditions



# Working Remote

How do you keep employees engaged and productive with everyone working remote?

- Office Setup & Tools
- Establish clear expectations
  - ✓ Same output/KPIs
  - ✓ Avoid distractions (No watching kids while working)
  - ✓ Establish regular calls/meetings (short)
  - ✓ Stay consistent (Same work hours & time management)
- Increase communications
  - ✓ Skype/Gotomeeting/Instant Messaging
- ✓ Consider Telecommuting Agreement



# Alternatives to Reductions in Force

- Catch up on lower priority task items
- Plan for growth and scaling your business
- Involve your employees in things that impact them
- Allow or request reduced, temporary work hours
- Consider short-term non-matching retirement plans
- Salary reduction – short term
- Come up with new and creative ideas, such as:
  - how to compete more effectively
  - create new strategies on efficiency
  - brainstorm how to set your company apart from your competition
- Volunteerism
- Consider a temporary shutdown or furlough



# Furlough vs RIF

- Keep on books vs termination
- Both collect unemployment
- Stay on medical insurance vs go on COBRA
- Employees on-hold coming back vs terminated (gone)
- Positive morale



# Furlough Implementation

- Determine who to furlough?
- How will benefits be handled?
- How will premiums be handled?
- Inform team members
- Communicate pay, what to expect, benefits, etc.
- Provide information to collect unemployment
- Consider providing them with a furlough letter as well



## Sample Furlough Notification Letter

[DATE]

To: Employee Name

From: Management/Company Rep

RE: Furlough Notification

Dear (employee name),

Due to the COVID-19 public health emergency [and recent local/state mandates if applicable], (Company name) is implementing actions to ensure our future financial stability. Unfortunately, this current pandemic situation has impacted our business significantly, and as a result, we find that we must make some problematic short-term decisions.

[if the business is temporarily closing use: Due to the COVID-19 public health emergency [and recent local/state mandates if applicable], (Company name)'s business volume has been impacted significantly. As a result, we find that we must make a questionable short-term decision to close our business temporarily.]

As a result, your current position with (company name) is being placed on furlough effective immediately and until further notice. Furloughs are a company-initiated short-term temporary unpaid leave of absence; your employment with (company name) has not been terminated at this time. The furlough period and provisions may be changed or terminated at the sole discretion of the Company and do not create any employment contract, express or implied.

During the furlough period, your health benefits will continue (if applicable) throughout this furlough period as long as you continue to pay your portion of the benefits. [See attached letter for repayment of premiums]

During the furlough period, you may file for unemployment compensation. Please refer to your state's guidelines for unemployment compensation regarding specific details and provisions surrounding application, eligibility, and collection of benefits. The link for [state] unemployment office is: [insert a link to state UI office]

[Depending on your situation, you may have some benefits through (state) Paid Family Leave and Disability Benefits: (insert link).]

You [may/may not] use Personal Time Off (PTO)/Vacation during the furlough period.

If you find alternate long-term employment during the furlough period and do not intend to return to work at (company name), please immediately notify Human Resources or me of your job status change. If the Company is not able to return you to work by the end of the furlough period, your employment status will be considered to be a reduction in force.

During the furlough, we will communicate any changes in the status or direction of the furlough or business activities.

Please accept our appreciation for all your hard work with (company name) as we try to navigate our business through a difficult time. If you have any questions, please contact me or (name) in Human Resources.

Thank you,

Name of Manager/Company Rep



# Reductions In Force

- Determine who is impacted?
- Severance or outplacement help?
- Separation agreement?
- Benefits and COBRA
- Items to collect back
- Work transition
- Prepare final check
- Communication to those impacted & those who stay
- Notice or immediate?



# Employer COVID-19 Toolkit

<https://www.hrserviceinc.com/employer-coronavirus-toolkit/>



## Articles, Tools, Template & Resources

- FFCRA Overview & FAQs
- Responding to Downturn Market
- Furloughs & RIF
- COVID-19 Solutions
- More



# Questions or Need help with HR, Compliance or Administration Solutions

[www.HRServiceInc.com](http://www.HRServiceInc.com)

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(833) 685-8400 x 1

