



COVID-19 and Public Sector Employers:
What you Need to Know about the FFCRA and CARES Act
AAPPA, March 2020



Panelists



Brian Butler

Public Administration
Practice Group Leader

Cobbs Allen



Bo Hartsfield

Executive VP of
Employee Benefits

Cobbs Allen



Robbie Hyde

Attorney

**Alexander Hyde
Law Firm**



1. FFCRA and CARES Act Resources
2. COVID-19 Impact on Healthcare Benefit Plans
3. Member-submitted questions
4. Additional questions from the “Questions” Que
5. Other Jurisdiction Responses (Survey)



Rules of Engagement

Everyone is muted (225+ participants).

Ask questions in the “Questions” field.

- If clarification is needed from you, we will unmute your microphone.
- Questions will be answered as time allows.

Last-minute member-submitted questions.

Be patient with us!



1. SHRM Summary of FFCRA
2. SHRM Summary of CARES Act
3. DOL Q&A
4. Sample FMLA Leave Expansion & Emergency Paid Sick Leave Policy
5. Cobbs Allen Client Communication re: DOL Guidance
6. ThinkHR



Families First Coronavirus Response Act (FFCRA)

Four (4) Parts:

1. Emergency Family and Medical Leave Expansion Act
2. Emergency Paid Sick Leave Act
3. Tax Credits for paid Sick and Paid Family Medical Leave
4. Emergency Unemployment Insurance Stabilization and Access Act
5. Health Care



Cornovirus Aid, Response, and Economic Security (CARES) Act

Six (6) Parts:

1. Health Care
2. Benefits
3. Unemployment Insurance
4. Retirement
5. Business Provisions
6. Education Assistance



Impact on Health Plans & Benefits: Fully-Insured Plans and LGHIP (Bo)

- In-network diagnostic tests for COVID-19 and the related in-person or telehealth visit, emergency room visit, or urgent care visit will be covered 100%.
- Members will not be required to pay for these services even in an HDHP.
- Telehealth services are also available to you and your family for medically necessary services that are unrelated to COVID-19 with no member cost-share.
 - HSA Qualified HDHP – telehealth services for non COVID-19 related diagnoses' will be subject to the in-network benefit level and the applicable member cost-sharing.
- LGHIP COVID-19 Considerations

➤ Impact on Health Plans & Benefits: Self-Funded Plans (Bo)

- In-network diagnostic tests for COVID-19 and the related in-person or telehealth visit, emergency room visit, or urgent care visit will be covered 100%.
- Members will not be required to pay for these services even in a HDHP.
- Self-Funded Plans have the option of covering inpatient hospital services at 100% or covering inpatient services as stated in their policy document.
- Self-Funded Plans have the option of covering all telehealth visits 100% regardless of whether or not the visit is related to COVID-19.



Questions re: Impact to Benefits (Bo)

- 1. “Do we know how FSA accounts, specifically dependent care, will be affected? I have several employees who elected the maximum but will not incur all of that expense this year. I have already reached to our TPA to inquire but they are awaiting guidance from the IRS on whether we will be allowed to adjust the election amount in light of this event.”*
- 2. “How are municipalities handling Flexible Spending Accounts since many people cannot get into see their physicians? I would hope to see a longer carry over period for 2021.”*



Questions re: Impact to Benefits (Bo)

- 3. “For employees who are being paid 2/3 of their salary as part of the FFCRA benefit package, how will their Flexible Spending- Dependent Child Care account be affected? (They are making monthly contributions based on the total anticipated annual cost of child care. With schools and daycares closed, many will stay home to provide child care and will not be paying a school or daycare facility.)”*



Impact on Health Plans & Benefits (Bo)

There is no relief for FSA benefit programs currently listed in the FFCRA legislation.

- Regular rules will apply until the IRS/DOL take action to implement a relief program.
- Certain TPA's may be flexible in allowing an extended runout period for members to submit claims longer.
- Refer to your TPA and your FSA Plan Document to see if status and contribution changes are allowed mid-year.

Medical, Limited Medical or Combination FSA



Impact on Health Plans & Benefits (Bo)

Dependent Care FSA

2019 Contribution Extension for HSA

- HSA participants have until July 15, 2020 to contribute funds to their HSA for the 2019 tax year.

The CARES Act permanently reinstated coverage of over-the-counter (OTC) drugs and medicines as eligible for reimbursement from HSA, FSA, and HRA Plans

- No need for a prescription for OTC items and includes menstrual care products
- This change is effective for expenses incurred on or after January 1, 2020



Questions re: RSA and Compensation (Brian)

4. *“I am assuming that retirement service credit will be reduced if employees are only receiving 2/3 of their regular pay under the Emergency Sick Leave Act and the Emergency FMLA Enhancement provisions.”*

5. *“I am confused on the expanded FMLA as far as the pay. I know it says the first 2 weeks are unpaid, but the employee can substitute the emergency paid sick leave for that if they want to, what is unclear to me is if the employer is then obligated to pay the employee for 10 weeks even if they don't have any accrued sick or vacation time? And I am assuming from what I read that Part-time employees are eligible for this as well if their circumstances meet the qualifying reasons?” (See SHRM FFCRA analysis)*



Questions re: Compensation (Brian)

6. *“Would like to know if we are interpreting the act correctly. On page 41-42 it seems that we cannot make employees use their own leave time to get a full paycheck under FFCRA but they can elect/request to instead of the 2/3 pay.”*
 - a. *“If the first 10 days of EFML are unpaid, can the employee opt to be unpaid the first 10 days instead of using their vacation/sick leave (regardless of the employer policy)?”*



Questions re: Layoffs and Furloughs (Robbie)

7. *“Do any of the COVID-19 related federal acts create any type of limitation on the ability of municipalities to engage in layoffs? If no, if an employee is on EPSLA or EFMLA leave when a layoff is enacted, can EPSLA or EFMLA benefits be discontinued?”*

8. *“If an employee is in a furlough status (still has employment status but no longer being scheduled for work), are they entitled to EPSLA or EFMLA benefits?”*



Questions re: Caregivers (Robbie)

- 9. “Will the Emergency Family and Medical Leave Expansion include grandparents and grandchildren?”*



Questions re: FMLA and EFMLEA (Robbie)

10. *“I have an employee who approached me last week about an upcoming FMLA event. She has a doctor’s note saying that around April 16 she will have to be off for 5 weeks for medical reasons. She just starting working here at the end of May 2019. So she has less than the hours that would have made her FMLA eligible under the previous FMLA guidelines. Do the new FMLA guidelines include instances that are not related to COVID-19? Or does it encompass all FMLA reasons? In other words, do I now apply the new FMLA guidelines to her & her situation?”*

11. *“Re: Child care – if the children are school age and did not attend an after care program before...do we give them the time off now?? What is the age cut off?”*



Questions re: Employee Communication (Robbie)

12. “How do you handle notifying employees that a co-worker may have been exposed to COVID-19 or has tested positive for COVID-19?”



Questions re: CARES Act and Tax Implications (Robbie)

13. *“How can we find out if municipalities are or will be considered for tax credits (payroll and PPE expenses) due to the pandemic?”*
14. *“Will municipalities receive reimbursement for the (80) hours of Emergency Sick Leave and the part-time average sick leave?”*
15. *“Will the municipalities receive reimbursement for covering health/dental (single & family coverage) expenses while the employee is on leave as related to COVID-19?”*
16. *“Are municipalities exempt from paying FICA and Medicare for wages paid for leave granted pursuant to FFCRA (EPSLA or EFMLA)?”*



Questions re: Unemployment (Robbie)

17. *“Do you know how much employees will be able to get if they file for unemployment? Will they get more, less or the same as if they were at work?”*
18. *“Can some employees in the same department be on unemployment (unpaid time) and others use their annual/sick time?”*
19. *“I’m really trying to figure out if we should have people take annual/sick/FFCRA or just shut down completely and have them file for unemployment....or if we can do both. If they have annual/sick/or qualify for FFCRA they can use that, but if they don’t (or they don’t want to use their time) they can file unemployment.”*



Questions re: Exposure (Robbie)

- 20. “If an employee would like to self-isolate due to COVID-19 concerns but is not under doctor’s orders, can we require them to take annual leave?”*
- 21. “Can restrictions be placed on personal travel and secondary employment for first responders (EMS, 911, Fire, Law Enforcement etc)? I think the concern is over essential employees not staying home on their off days and traveling to some areas that are high risk (example – NOLA to visit family, attend weddings/funerals etc.). Has anyone implemented return to work policies for personal travel outside of their county/Alabama? Are they asking them to quarantine for a period of days after out of county or state travel? What’s acceptable?”*



Questions re: Miscellaneous (Brian)

- 22. “Who is a first responder? Based on this-will the admins for the police department qualify? Can we exempt them? (See DOL Q&A #57)*
- 23. “How do you determine who is essential and who is not?”*
- 24. “What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?”*



Final Questions (Brian, Bo, or Robbie)

*“Are **temporary employees** covered under the Families First Coronavirus Response Act. They are not employed by an agency. They work directly for the jurisdiction as unclassified/temporary and are not benefits eligible.”*

“If intermittent leave is allowed, is it in full-day increments?”

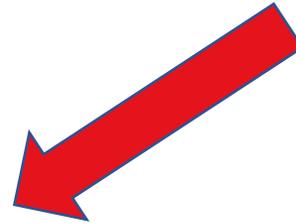
“What if an eligible employee needs leave for their self-quarantine, is off for 2 weeks and then needs another 2 weeks off to care for a family member? Also during this time, may need to care for a child due to school closure.”



Final Questions (Brian, Bo, or Robbie)

Covered employees eligible for paid sick leave include:

- 1) Employee subject to a Federal, State, or local quarantine or isolation order related to coronavirus;
- 2) Employee has been advised by health care provider to self-quarantine due to coronavirus;
- 3) Employee is experiencing symptoms of coronavirus;
- 4) Employee is caring for an individual who is subject to an order described in (1) or has been advised as described in (2);
- 5) Employee is care for their child because the school is closed or childcare provider is unavailable due to coronavirus; or
- 6) Employee is experiencing a similar condition specified by Secretary of HHS.



“Does this mean if a Healthcare Provider advised the employee to self-quarantine as a precaution because of a pre-existing condition that considers them as high risk?”

or

Does this mean that the employee is showing symptoms of COVID-19 and has been advised by a Healthcare Provider to self-quarantine?”



Can eligible employees use the paid sick leave intermittently for reason # 5 (school closure) and please verify that they cannot for reasons #1,2,3,4,6?

Questions?



Brian Butler, SPHR

bbutler@cobbsallen.com

205-246-3721

AAPPA COVID-19 Webinar Follow-Up Q&A's

Q1: I received an email from our FSA broker saying that OTC meds are not being covered under FSA right now. Is this correct?

A1: They most likely sent this info prior to March 27, 2020, which is when President Trump signed into law the CARES Act, which permanently reinstates coverage of over-the-counter (OTC) drugs and medicines as eligible for reimbursement from Health Savings Accounts (HSAs), Flexible Spending Accounts (FSAs) and Health Reimbursement Arrangements (HRAs) without need for a prescription. This action helps to reduce additional strain from an already overwhelmed healthcare system. This is a permanent change.

Q2: If an employee is on 2/3 pay, do we have to let them use sick or vacation to make up 100% of pay?

A2: **No. That is subject to an agreement between the employer and employee.**

Q3: Of the 6 items that are covered for approved leave the last item states "experiencing any other substantially-similar condition specified by the US Dept of Health and Human Services." I have an employee who suffers from COPD, would her leave be approved under item 6 to receive 2/3 pay for her time off or where would we find the list of conditions covered?

A3: **No. This section was designed to be a category of illness TBD by HHS. The only way this employee would be entitled to paid leave under this scenario is if the employee's healthcare provider advised her to self-quarantine due to her susceptibility to COVID-19 due to her COPD.**

Q4: So I am assuming that detention deputies would be exempt? Is there "hazard pay" for police departments?

A4: **They could be exempt from the provisions of the FFCRA. Also, there nothing in the new legislation that provides "hazard pay" for police departments.**

Q5: Can we put some employees in the same department on furlough while others are not?

A5: **Yes. However, I would seek legal counsel to develop a policy that delineates the rules for a furlough.**

Q6: I understand that we can't force an employee to substitute 1/3 of the unpaid leave. Can we have a policy that supplementing the paid leave?

A6: **I am not sure what you are asking. Please email me for clarification bbutler@cobbsallen.com**

Q7: This is related to the first two weeks paid sick time. Can an employee use one day for caring for child and then next week take another day, etc.? What about Intermittent leave for taking care of child?

A7: **Yes and intermittent leave is permitted upon agreement being reached between employer and employee.**

Q8: If local childcare provider is providing childcare services at no charge to "essential" city employees, does the City have any grounds to require that this service be used?

A8: **No**

Q9: What is the criteria for receiving the additional \$600/week of unemployment? Does it differ for Full-Time vs. Part-Time employees?

A9: **In order to receive the \$600/week, the unemployment must be due to COVID-19 related furlough, lay off, etc. The Act does not differentiate between part-time and full-time. In addition, even though Republicans attempted to include language to cap unemployment benefits at the amount actually earned by the recipient, it was left out of the Act.**

Q10: The answer to Question 20 on the webinar was not clear. Would you please repeat/elaborate on your answer?

A10: **Question#20: "If an employee would like to self-isolate due to COVID-19 concerns but is not under doctor's orders, can we require them to take annual leave? If your policy requires employees to take annual leave for time off, yes.**

Q11: The Act takes effect tomorrow (4/1). Some of us chose to self-isolate and perform work remotely (i.e. from home) Can our employer still consider us absent from work and compel us to use paid leave? To clarify, some of us chose to self-isolate prior to April 1 and perform work remotely...

A11: **If your employer allows telecommuting and an employee is approved to telecommute, the employer should not consider the employee absent from work and compel the employee to use paid leave.**

Q12: So you are saying that Municipalities will not be eligible for the tax credit but we still have to follow the guidelines and give 2- weeks paid sick and also pay for the FMLA?

A12: **Yes**

Q13: Are all public entities are included for the under 500 employees language? For example, public libraries?

A13: **Yes**

Q14: Could you revisit the eligibility of employees who have telecommuting ability? Did I understand you to say that they may not qualify for the FFCRA paid leave if they have been given the opportunity to telecommute?

A14: **Correct**

Q15: What is the actual effective date for CARES ACT?

A15: **March 27, 2020**

Q16: If there is work for an employee to perform who is caring for children due to school/daycare being out but has a spouse who could care for the children late afternoon and early evening, can an alternative schedule be offered to the employee to come into work to obtain their weekly hours (i.e. late afternoon / early evening hours and weekend end hours, etc). Normal office hours 8:30 to 4:30 Monday - Friday. This would only be a temporary schedule until the daycares are reopened and functional.

A16: **Yes, as long as you are following applicable FLSA provisions.**

Q17: Can the first 10 days of pay for an employee out on extended family leave be paid at 2/3 their regular rate through the Emergency Sick Leave Act?

A18: **Yes, under the following circumstances:**

1. The employee chooses to use Emergency Paid Sick Leave (EPSL) for the first 10 days of Emergency Family Medical Leave Expansion Act (EFMLEA), and
2. The employee is requesting leave for one or more of the following circumstances:
 - a. The care of an individual who is subject to a federal, state or local quarantine or isolation order related to coronavirus or for the care of an individual who has been advised by a health care provider to self-quarantine due to coronavirus, or
 - b. The employee is caring for their child because the school is closed or the childcare provider is unavailable due to coronavirus, or
 - c. The employee is experiencing a similar condition specified by the Secretary of HHS.

Q19: Because of the expanded SUI benefits we have employees who are asking about volunteering to be furloughed. Do you see any legal issues with this?

A19: **I do not see a legal issue with this type of furlough from the employer's perspective. The only thing of concern for me would be the employee's eligibility for unemployment benefits due to the voluntary nature of the furlough. However, if the employer certifies the furlough/unpaid leave is due to COVID-19 issues, I do not think the benefits would be denied.**

AAPPA COVID-19 and the FFCRA Virtual Problem Sharing Forum

Survey Results – 65 respondents

If you would like details for each response (i.e. city or county name, point of contact, etc.), please let me know and I can provide the info to you.

Are you excluding emergency first responders from the FMLA expansion provided by the FFCRA?

Yes – 22

No – 38

Undecided – 5

What is the current status of your organization's operations? Choose all that apply.

Open (all employees present working regular assignments/shifts) - 22

Open (all employees present working staggered assignments/shifts, telework, etc.) - 32

Closed (only essential personnel working) - 11

Does your organization have an Emergency Response Plan?

Yes and willing to share - 24

Yes and not willing to share - 12

No - 24

Are you providing a stipend/bonus pay to public safety and public works employees during this pandemic?

Yes - 2

No - 63

What plans are your public safety departments making for first responders who test positive for COVID-19? Check all that apply.

Stay at home - 49

Stay at home or another location - 1

Stay at home or in a fire station - 1

Stay at another location - 1

Stay in a fire station - 1

Undecided - 12

FFCRA: COVID-19



FFCRA GUIDANCE AND REQUIRED NOTICE NOW AVAILABLE

On Tuesday, March 24, the U.S. Department of Labor (DOL) issued guidance on the paid leave requirements under the federal Families First Coronavirus Response Act (FFCRA). Included in the “Questions and Answers” document was clarification on the effective date of the leave provisions, which will be **April 1, 2020**.

The guidance addresses issues such as which employers and employees are covered under the FFCRA, how much leave employers are required to grant employees and for what pay, exemptions from the law and what tax credits are available to employers to pay for the leave. The DOL also released late on Wednesday, March 25 the notice covered employers are required to post as a part of the FFCRA. A copy of that notice is available on the [DOL’s COVID-19 Web page](#) along with an FAQ associated with the notice.

Overview

The **FFCRA** requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The DOL’s Wage and Hour Division administers and enforces the new law’s paid leave requirements. The language of the FFCRA said it would take effect “not later than 15 days after the date of enactment.” DOL Q&As clarify that the leave provisions of the law take effect on April 1, 2020.

In general, the FFCRA requires covered employers to provide the following to **all employees**:

- ✓ *Two weeks (up to 80 hours) of **paid sick leave** at an 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) or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- ✓ *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds an employee’s regular rate of pay** where an 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, 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.

**See Calculation of Pay section on Page 3 for additional details.*

In addition, a covered employer must provide the following to **employees whom it has employed for at least 30 days**:

- ✓ *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 child care 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. The DOL provided specific guidance on determining whether a business is under the 500-employee threshold in their [Q&A](#).

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. Most employees of the federal government are not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the FMLA are covered by the FFCRA's paid sick leave provision.

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 child care 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 he or she is caring for a child whose school or place of care is closed (or child care 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

- ✓ **For leave reasons (1), (2), or (3):** Employees taking leave must 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 two-week period).
- ✓ **For leave reasons (4) or (6):** Employees taking leave must be paid at two-thirds their regular rate or two-thirds the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a two-week period).
- ✓ **For leave reason (5):** Employees taking leave shall be paid at two-thirds their regular rate or two-thirds 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).

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.

Employer Notice

Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements. A copy of that notice is available on the [DOL's COVID-19 Web page](#) along with frequently asked questions.

03/18/2020

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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 that violate 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. Employers that violate 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 child care provider is unavailable) are subject to the enforcement provisions of the FMLA. The DOL will observe a temporary period of non-enforcement for the first 30 days after the FFCRA takes effect for employers that act reasonably and in good faith to comply. 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 DOL receives a written commitment from the employer to comply with the Act in the future.

Source: U.S. Department of Labor



Families First Coronavirus Response Act: Questions and Answers

As provided under the legislation, the U.S. Department of Labor will be issuing implementing regulations. Additionally, as warranted, the Department will continue to provide compliance assistance to employers and employees on their responsibilities and rights under the FFCRA.

DEFINITIONS

“Paid sick leave” – means paid leave under the Emergency Paid Sick Leave Act.

“Expanded family and medical leave” – means paid leave under the Emergency Family and Medical Leave Expansion Act.

QUESTIONS & ANSWERS

- 1. What is the effective date of the Families First Coronavirus Response Act (FFCRA), which includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act?**

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.

- 2. As an employer, how do I know if my business is under the 500-employee threshold and therefore must provide paid sick leave or expanded family and medical leave?**

You have fewer than 500 employees if, at the time your employee’s leave is to be taken, you employ fewer than 500 full-time and part-time employees within the United States, which includes any State of the United States, the District of Columbia, or any Territory or possession of the United States. In making this determination, you should include employees on leave; temporary employees who are jointly employed by you and

another employer (regardless of whether the jointly-employed employees are maintained on only your or another employer's payroll); and day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship). Workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than employees, are not considered employees for purposes of the 500-employee threshold.

Typically, a corporation (including its separate establishments or divisions) is considered to be a single employer and its employees must each be counted towards the 500-employee threshold. Where a corporation has an ownership interest in another corporation, the two corporations are separate employers unless they are joint employers under the FLSA with respect to certain employees. If two entities are found to be joint employers, all of their common employees must be counted in determining whether paid sick leave must be provided under the Emergency Paid Sick Leave Act and expanded family and medical leave must be provided under the Emergency Family and Medical Leave Expansion Act.

In general, two or more entities are separate employers unless they meet the integrated employer test under the Family and Medical Leave Act of 1993 (FMLA). If two entities are an integrated employer under the FMLA, then employees of all entities making up the integrated employer will be counted in determining employer coverage for purposes of paid sick leave under the Emergency Paid Sick Leave Act and expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act.

3. If I am a private sector employer and have 500 or more employees, do the Acts apply to me?

No. Private sector employers are only required to comply with the Acts if they have fewer than 500 employees.^[1]

4. If providing child care-related paid sick leave and expanded family and medical leave at my business with fewer than 50 employees would jeopardize the viability of my business as a going concern, how do I take advantage of the small business exemption?

To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.

You should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.

- 5. How do I count hours worked by a part-time employee for purposes of paid sick leave or expanded family and medical leave?** A part-time employee is entitled to leave for his or her average number of work hours in a two-week period. Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work. If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. Such a part-time employee may take paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that. If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that you and your employee agreed that the employee would work upon hiring. And if there is no such agreement, you may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment.

6. When calculating pay due to employees, must overtime hours be included?

Yes. The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

However, the Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.

If the employee's schedule varies from week to week, please see the answer to [Question 5](#), because the calculation of hours for a full-time employee with a varying schedule is the same as that for a part-time employee.

Please keep in mind the daily and aggregate caps placed on any pay for paid sick leave and expanded family and medical leave as described in the answer to Question 7.

Please note that pay does not need to include a premium for overtime hours under either the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act.

7. **As an employee, how much will I be paid while taking paid sick leave or expanded family and medical leave under the FFCRA?**

It depends on your normal schedule as well as why you are taking leave.

If you are taking paid sick leave because you are unable to work or telework due to a need for leave because you (1) are subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (2) have been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (3) are experiencing symptoms of COVID-19 and are seeking medical diagnosis, you will receive for each applicable hour the greater of:

- your regular rate of pay,
- the federal minimum wage in effect under the FLSA, or
- the applicable State or local minimum wage.

In these circumstances, you are entitled to a maximum of \$511 per day, or \$5,110 total over the entire paid sick leave period.

If you are taking paid sick leave because you are: (1) caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (2) caring for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or (3) experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services, you are entitled to compensation at 2/3 of the greater of the amounts above.

Under these circumstances, you are subject to a maximum of \$200 per day, or \$2,000 over the entire two week period.

If you are taking expanded family and medical leave, you may take paid sick leave for the first ten days of that leave period, or you may substitute any accrued vacation leave, personal leave, or medical or sick leave you have under your employer's policy. For the following ten weeks, you will be paid for your leave at an amount no less than 2/3 of your regular rate of pay for the hours you would be normally scheduled to work. The regular rate of pay used to calculate this amount must be at or above the federal minimum wage, or the applicable state or local minimum wage. However, you will not receive more than \$200 per day or \$12,000 for the twelve weeks that include both paid

sick leave and expanded family and medical leave when you are on leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

To calculate the number of hours for which you are entitled to paid leave, please see the answers to Questions 5-6 that are provided in this guidance.

8. What is my regular rate of pay for purposes of the FFCRA?

For purposes of the FFCRA, the regular rate of pay used to calculate your paid leave is the average of your regular rate over a period of up to six months prior to the date on which you take leave.^[2] If you have not worked for your current employer for six months, the regular rate used to calculate your paid leave is the average of your regular rate of pay for each week you have worked for your current employer.

If you are paid with commissions, tips, or piece rates, these amounts will be incorporated into the above calculation to the same extent they are included in the calculation of the regular rate under the FLSA.

You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

9. May I take 80 hours of paid sick leave for my self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?

No. You may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons. However, the total number of hours for which you receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

10. If I am home with my child because his or her school or place of care is closed, or child care provider is unavailable, do I get paid sick leave, expanded family and medical leave, or both—how do they interact?

You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both paid sick leave and expanded family and medical leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under

the Emergency and Family Medical Leave Expansion Act unless you elect to use existing vacation, personal, or medical or sick leave under your employer's policy. After the first ten workdays have elapsed, you will receive 2/3 of your regular rate of pay for the hours you would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.

Please note that you can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act for leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

11. Can my employer deny me paid sick leave if my employer gave me paid leave for a reason identified in the Emergency Paid Sick Leave Act prior to the Act going into effect?

No. The Emergency Paid Sick Leave Act imposes a new leave requirement on employers that is effective beginning on April 1, 2020.

12. Is all leave under the FMLA now paid leave?

No. The only type of family and medical leave that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

13. Are the paid sick leave and expanded family and medical leave requirements retroactive?

No.

14. How do I know whether I have “been employed for at least 30 calendar days by the employer” for purposes of expanded family and medical leave?

You are considered to have been employed by your employer for at least 30 calendar days if your employer had you on its payroll for the 30 calendar days immediately prior to the day your leave would begin. For example, if you want to take leave on April 1, 2020, you would need to have been on your employer's payroll as of March 2, 2020.

If you have been working for a company as a temporary employee, and the company subsequently hires you on a full-time basis, you may count any days you previously worked as a temporary employee toward this 30-day eligibility period.

15. What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?

Private sector employers that provide paid sick leave and expanded family and medical leave required by the FFCRA are eligible for reimbursement of the costs of that leave through refundable tax credits. If you intend to claim a tax credit under the FFCRA for your payment of the sick leave or expanded family and medical leave wages, you should retain appropriate documentation in your records. You should consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit. You are not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.

If one of your employees takes expanded family and medical leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19, you may also require your employee to provide you with any additional documentation in support of such leave, to the extent permitted under the certification rules for conventional FMLA leave requests. For example, this could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider.

16. What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?

You must provide to your employer documentation in support of your paid sick leave as specified in applicable IRS forms, instructions, and information.

Your employer may also require you to provide additional in support of your expanded family and medical leave taken to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19-related reasons. For example, this may include a notice of closure or unavailability from your child's school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to you from an employee or official of the school, place of care, or child care provider. Your employer must retain this notice or documentation in support of expanded family and medical leave, including while you may be taking unpaid leave that runs concurrently with paid sick leave if taken for the same reason.

Please also note that all existing certification requirements under the FMLA remain in

effect if you are taking leave for one of the existing qualifying reasons under the FMLA. For example, if you are taking leave beyond the two weeks of emergency paid sick leave because your medical condition for COVID-19-related reasons rises to the level of a serious health condition, you must continue to provide medical certifications under the FMLA if required by your employer.

17. When am I able to telework under the FFCRA?

You may telework when your employer permits or allows you to perform work while you are at home or at a location other than your normal workplace. Telework is work for which normal wages must be paid and is not compensated under the paid leave provisions of the FFCRA.

18. What does it mean to be unable to work, including telework for COVID-19 related reasons?

You are unable to work if your employer has work for you and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents you from being able to perform that work, either under normal circumstances at your normal worksite or by means of telework.

If you and your employer agree that you will work your normal number of hours, but outside of your normally scheduled hours (for instance early in the morning or late at night), then you are able to work and leave is not necessary unless a COVID-19 qualifying reason prevents you from working that schedule.

19. If I am or become unable to telework, am I entitled to paid sick leave or expanded family and medical leave?

If your employer permits teleworking—for example, allows you to perform certain tasks or work a certain number of hours from home or at a location other than your normal workplace—and you are unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then you are entitled to take paid sick leave.

Similarly, if you are unable to perform those teleworking tasks or work the required teleworking hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, then you are entitled to take expanded family and medical leave. Of course, to the extent you are able to telework while caring for your child, paid sick leave and expanded family and medical leave is not available.

20. May I take my paid sick leave or expanded family and medical leave intermittently while teleworking?

Yes, if your employer allows it and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, you and your employer may agree that you may take paid sick leave intermittently while teleworking. Similarly, if you are prevented from teleworking your normal schedule of hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you and your employer may agree that you can take expanded family medical leave intermittently while teleworking.

You may take intermittent leave in any increment, provided that you and your employer agree. For example, if you agree on a 90-minute increment, you could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

The Department encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.

21. May I take my paid sick leave intermittently while working at my usual worksite (as opposed to teleworking)?

It depends on why you are taking paid sick leave and whether your employer agrees. Unless you are teleworking, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments. It cannot be taken intermittently if the leave is being taken because:

- You are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- You are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- You are caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless you are teleworking, once you begin taking paid sick leave for one or more of these qualifying reasons, you must continue to take paid sick leave each day until you either (1) use the full amount of paid sick leave or (2) no longer have a qualifying reason for taking paid sick leave. This limit is imposed because if you are sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others.

If you no longer have a qualifying reason for taking paid sick leave before you exhaust your paid sick leave, you may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

In contrast, if you and your employer agree, you may take paid sick leave intermittently if you are taking paid sick leave to care for your child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons. For example, if your child is at home because his or her school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you may take paid sick leave on Mondays, Wednesdays, and Fridays to care for your child, but work at your normal worksite on Tuesdays and Thursdays.

The Department encourages employers and employees to collaborate to achieve maximum flexibility. Therefore, if employers and employees agree to intermittent leave on less than a full work day for employees taking paid sick leave to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19-related reasons, the Department is supportive of such voluntary arrangements.

22. May I take my expanded family and medical leave intermittently while my child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, if I am not teleworking?

Yes, but only with your employer's permission. Intermittent expanded family and medical leave should be permitted only when you and your employer agree upon such a schedule. For example, if your employer and you agree, you may take expanded family and medical leave on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while your child is at home because your child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, for the duration of your leave.

The Department encourages employers and employees to collaborate to achieve flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the Department supports such voluntary arrangements.

23. If my employer closed my worksite before April 1, 2020 (the effective date of the FFCRA), can I still get paid sick leave or expanded family and medical leave?

No. If, prior to the FFCRA's effective date, your employer sent you home and stops paying you because it does not have work for you to do, you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

It should be noted, however, that if your employer is paying you pursuant to a paid leave policy or State or local requirements, you are not eligible for unemployment insurance.

24. If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but before I go out on leave, can I still get paid sick leave and/or expanded family and medical leave?

No. If your employer closes after the FFCRA's effective date (even if you requested leave prior to the closure), you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

25. If my employer closes my worksite while I am on paid sick leave or expanded family and medical leave, what happens?

If your employer closes while you are on paid sick leave or expanded family and medical leave, your employer must pay for any paid sick leave or expanded family and medical leave you used before the employer closed. As of the date your employer closes your worksite, you are no longer entitled to paid sick leave or expanded family and medical leave, but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because the

employer was required to close pursuant to a Federal, State or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

26. If my employer is open, but furloughs me on or after April 1, 2020 (the effective date of the FFCRA), can I receive paid sick leave or expanded family and medical leave?

No. If your employer furloughs you because it does not have enough work or business for you, you are not entitled to then take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

27. If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but tells me that it will reopen at some time in the future, can I receive paid sick leave or expanded family and medical leave?

No, not while your worksite is closed. If your employer closes your worksite, even for a short period of time, you are not entitled to take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State, or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>. If your employer reopens and you resume work, you would then be eligible for paid sick leave or expanded family and medical leave as warranted.

28. If my employer reduces my scheduled work hours, can I use paid sick leave or expanded family and medical leave for the hours that I am no longer scheduled to work?

No. If your employer reduces your work hours because it does not have work for you to perform, you may not use paid sick leave or expanded family and medical leave for the hours that you are no longer scheduled to work. This is because you are not prevented from working those hours due to a COVID-19 qualifying reason, even if your reduction in hours was somehow related to COVID-19.

You may, however, take paid sick leave or expanded family and medical leave if a COVID-19 qualifying reason prevents you from working your full schedule. If you do, the amount of leave to which you are entitled is computed based on your work schedule before it was reduced (see [Question 5](#)).

29. May I collect unemployment insurance benefits for time in which I receive pay for paid sick leave and/or expanded family and medical leave?

No. If your employer provides you paid sick leave or expanded family and medical leave, you are not eligible for unemployment insurance. However, each State has its own unique set of rules; and [DOL recently clarified additional flexibility to the States](#) (UIPL 20-10) to extend partial unemployment benefits to workers whose hours or pay have been reduced. Therefore, individuals should contact their State workforce agency or State unemployment insurance office for specific questions about eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

30. If I elect to take paid sick leave or expanded family and medical leave, must my employer continue my health coverage? If I remain on leave beyond the maximum period of expanded family and medical leave, do I have a right to keep my health coverage?

If your employer provides group health coverage that you've elected, you are entitled to continued group health coverage during your expanded family and medical leave on the same terms as if you continued to work. If you are enrolled in family coverage, your employer must maintain coverage during your expanded family and medical leave. You generally must continue to make any normal contributions to the cost of your health coverage. See WHD Fact Sheet 28A: <https://www.dol.gov/agencies/whd/fact-sheets/28a-fmla-employee-protections>.

If you do not return to work at the end of your expanded family and medical leave, check with your employer to determine whether you are eligible to keep your health coverage on the same terms (including contribution rates). If you are no longer eligible, you may be able to continue your coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA). COBRA, which generally applies to employers with 20 or more employees, allows you and your family to continue the same group health coverage at group rates. Your share of that cost may be higher than what you were paying before but may be lower than what you would pay for private individual health insurance coverage. (If your employer has fewer than 20 employees, you may be eligible to continue your health insurance under State laws that are similar to

COBRA. These laws are sometimes referred to as “mini COBRA” and vary from State to State.) Contact the Employee Benefits Security Administration at <https://www.dol.gov/agencies/ebsa/workers-and-families/changing-jobs-and-job-loss> to learn about health and retirement benefit protections for dislocated workers.

If you elect to take paid sick leave, your employer must continue your health coverage. Under the Health Insurance Portability and Accountability Act (HIPAA), an employer cannot establish a rule for eligibility or set any individual’s premium or contribution rate based on whether an individual is actively at work (including whether an individual is continuously employed), unless absence from work due to any health factor (such as being absent from work on sick leave) is treated, for purposes of the plan or health insurance coverage, as being actively at work.

31. As an employee, may I use my employer’s preexisting leave entitlements and my FFCRA paid sick leave and expanded family and medical leave concurrently for the same hours?

No. If you are eligible to take paid sick leave or expanded family and medical leave under the FFCRA, as well as paid leave that is already provided by your employer, unless your employer agrees you must choose one type of leave to take. You may not simultaneously take both, unless your employer agrees to allow you to supplement the amount you receive from paid sick leave or expanded family and medical leave under the FFCRA, up to your normal earnings, with preexisting leave. For example, if you are receiving 2/3 of your normal earnings from paid sick leave or expanded family and medical leave under the FFCRA and your employer permits, you may use your preexisting employer-provided paid leave to get the additional 1/3 of your normal earnings so that you receive your full normal earnings for each hour.

32. If I am an employer, may I supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?

If your employee chooses to use existing leave you have provided, yes; otherwise, no. Paid sick leave and expanded family medical leave under the FFCRA is in addition to employees’ preexisting leave entitlements, including Federal employees. Under the FFCRA, the employee may choose to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded family and medical leave, up to the employee’s normal earnings. Note, however, that you are not entitled to a tax credit for any paid sick leave or expanded family and medical leave that is not required to be paid or exceeds the limits set forth under Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.

However, you are not required to permit an employee to use existing paid leave to supplement the amount your employee receives from paid sick leave or expanded family and medical leave. Further, you may not claim, and will not receive tax credit, for such supplemental amounts.

33. If I am an employer, may I require an employee to supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?

No. Under the FFCRA, only the employee may decide whether to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded family and medical leave. The employee would have to agree to use existing paid leave under your paid leave policy to supplement or adjust the paid leave under the FFCRA.

34. If I want to pay my employees more than they are entitled to receive for paid sick leave or expanded family and medical leave, can I do so and claim a tax credit for the entire amount paid to them?

You may pay your employees in excess of FFCRA requirements. But you cannot claim, and will not receive tax credit for, those amounts in excess of the FFCRA's statutory limits.

35. I am an employer that is part of a multiemployer collective bargaining agreement, may I satisfy my obligations under the Emergency Family and Medical Leave Expansion Act through contributions to a multiemployer fund, plan, or program?

You may satisfy your obligations under the Emergency Family and Medical Leave Expansion Act by making contributions to a multiemployer fund, plan, or other program in accordance with your existing collective bargaining obligations. These contributions must be based on the amount of paid family and medical leave to which each of your employees is entitled under the Act based on each employee's work under the multiemployer collective bargaining agreement. Such a fund, plan, or other program must allow employees to secure or obtain their pay for the related leave they take under the Act. Alternatively, you may also choose to satisfy your obligations under the Act by other means, provided they are consistent with your bargaining obligations and collective bargaining agreement.

36. I am an employer that is part of a multiemployer collective bargaining agreement, may I satisfy my obligations under the Emergency Paid Sick Leave Act through contributions to a multiemployer fund, plan, or program?

You may satisfy your obligations under the Emergency Paid Sick Leave Act by making contributions to a multiemployer fund, plan, or other program in accordance with your existing collective bargaining obligations. These contributions must be based on the hours of paid sick leave to which each of your employees is entitled under the Act based on each employee's work under the multiemployer collective bargaining agreement. Such a fund, plan, or other program must allow employees to secure or obtain their pay for the related leave they take under the Act. Alternatively, you may also choose to satisfy your obligations under the Act by other means, provided they are consistent with your bargaining obligations and collective bargaining agreement.

37. Are contributions to a multiemployer fund, plan, or other program the only way an employer that is part of a multiemployer collective bargaining agreement may comply with the paid leave requirements of the FFCRA?

No. Both the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act provide that, consistent with its bargaining obligations and collective bargaining agreement, an employer may satisfy its legal obligations under both Acts by making appropriate contributions to such a fund, plan, or other program based on the paid leave owed to each employee. However, the employer may satisfy its obligations under both Acts by other means, provided they are consistent with its bargaining obligations and collective bargaining agreement.

38. Assuming I am a covered employer, which of my employees are eligible for paid sick leave and expanded family and medical leave?

Both of these new provisions use the employee definition as provided by the Fair Labor Standards Act, thus all of your U.S. (including Territorial) employees who meet this definition are eligible including full-time and part-time employees, and "joint employees" working on your site temporarily and/or through a temp agency. However, if you employ a health care provider or an emergency responder you are not required to pay such employee paid sick leave or expanded family and medical leave on a case-by-case basis. And certain small businesses may exempt employees if the leave would jeopardize the company's viability as a going concern. See Question 58 below.

There is one difference regarding an employee's eligibility for paid sick leave versus expanded family and medical leave. While your employee is eligible for paid sick leave regardless of length of employment, your employee must have been employed for 30 calendar days in order to qualify for expanded family and medical leave. For example, if your employee requests expanded family and medical leave on April 10, 2020, he or she must have been your employee since March 11, 2020.

39. **Who is a covered employer that must provide paid sick leave and expanded family and medical leave under the FFCRA?**

Generally, if you employ fewer than 500 employees you are a covered employer that must provide paid sick leave and expanded family and medical leave. For additional information on the 500 employee threshold, see [Question 2](#). Certain employers with fewer than 50 employees may be exempt from the Act's requirements to provide certain paid sick leave and expanded family and medical leave. For additional information regarding this small business exemption, see [Question 4](#) and [Questions 58 and 59](#) below.

Certain public employers are also covered under the Act and must provide paid sick leave and expanded family and medical leave. For additional information regarding coverage of public employers, see [Questions 52-54](#) below.

40. **Who is a son or daughter?**

Under the FFCRA, a “son or daughter” is your own child, which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing in loco parentis—someone with day-to-day responsibilities to care for or financially support a child. For additional information about in loco parentis, see [Fact Sheet #28B: Family and Medical Leave Act \(FMLA\) leave for birth, placement, bonding or to care for a child with a serious health condition on the basis of an “in loco parentis” relationship](#).

In light of Congressional direction to interpret definitions consistently, WHD clarifies that under the FFCRA a “son or daughter” is also an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability. For additional information on requirements relating to an adult son or daughter, see [Fact Sheet #28K](#) and/or call our toll free information and help line available 8 am–5 pm in your time zone, 1-866-4US-WAGE (1-866-487-9243).

41. **What do I do if my employer, who I believe to be covered, refuses to provide me paid sick leave?**

If you believe that your employer is covered and is improperly refusing you paid sick leave under the Emergency Paid Sick Leave Act, the Department encourages you to raise and try to resolve your concerns with your employer. Regardless of whether you discuss your concerns with your employer, if you believe your employer is improperly refusing you paid sick leave, you may call 1-866-4US-WAGE (1-866-487-9243). WHD is responsible for administering and enforcing these provisions. If you have questions or

concerns, you can contact WHD by phone or visit www.dol.gov/agencies/whd. Your call will be directed to the nearest WHD office for assistance to have your questions answered or to file a complaint. In most cases, you can also file a lawsuit against your employer directly without contacting WHD. If you are a public sector employee, please see the answer to [Question 54](#).

42. What do I do if my employer, who I believe to be covered, refuses to provide me expanded family and medical leave to care for my own son or daughter whose school or place of care has closed, or whose child care provider is unavailable, for COVID-19 related reasons?

If you believe that your employer is covered and is improperly refusing you expanded family and medical leave or otherwise violating your rights under the Emergency Family and Medical Leave Expansion Act, the Department encourages you to raise and try to resolve your concerns with your employer. Regardless whether you discuss your concerns with your employer, if you believe your employer is improperly refusing you expanded family and medical leave, you may call WHD at 1-866-4US-WAGE (1-866-487-9243) or visit www.dol.gov/agencies/whd. Your call will be directed to the nearest WHD office for assistance to have your questions answered or to file a complaint. If your employer employs 50 or more employees, you also may file a lawsuit against your employer directly without contacting WHD. If you are a public sector employee, please see the answer to [Question 54](#).

43. Do I have a right to return to work if I am taking paid sick leave or expanded family and medical leave under the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act?

Generally, yes. In light of Congressional direction to interpret requirements among the Acts consistently, WHD clarifies that the Acts require employers to provide the same (or a nearly equivalent) job to an employee who returns to work following leave.

In most instances, you are entitled to be restored to the same or an equivalent position upon return from paid sick leave or expanded family and medical leave. Thus, your employer is prohibited from firing, disciplining, or otherwise discriminating against you because you take paid sick leave or expanded family and medical leave. Nor can your employer fire, discipline, or otherwise discriminate against you because you filed any type of complaint or proceeding relating to these Acts, or have or intend to testify in any such proceeding.

However, you are not protected from employment actions, such as layoffs, that would have affected you regardless of whether you took leave. This means your employer can lay you off for legitimate business reasons, such as the closure of your worksite. Your employer must be able to demonstrate that you would have been laid off even if you had not taken leave.

Your employer may also refuse to return you to work in your same position if you are a highly compensated “key” employee as defined under the FMLA, or if your employer has fewer than 25 employees, and you took leave to care for your own son or daughter whose school or place of care was closed, or whose child care provider was unavailable, and all four of the following hardship conditions exist:

- your position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of your leave;
- your employer made reasonable efforts to restore you to the same or an equivalent position;
- your employer makes reasonable efforts to contact you if an equivalent position becomes available; and
- your employer continues to make reasonable efforts to contact you for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after your leave began, whichever is earlier.

44. Do I qualify for leave for a COVID-19 related reason even if I have already used some or all of my leave under the Family and Medical Leave Act (FMLA)?

If you are an eligible employee, you are entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA.

However, if your employer was covered by the FMLA prior to April 1, 2020, your eligibility for expanded family and medical leave depends on how much leave you have already taken during the 12-month period that your employer uses for FMLA leave. You may take a total of 12 workweeks for FMLA or expanded family and medical leave reasons during a 12-month period. If you have taken some, but not all, 12 workweeks of your leave under FMLA during the current 12-month period determined by your employer, you may take the remaining portion of leave available. If you have already taken 12 workweeks of FMLA leave during this 12-month period, you may not take additional expanded family and medical leave.

For example, assume you are eligible for preexisting FMLA leave and took two weeks of such leave in January 2020 to undergo and recover from a surgical procedure. You therefore have 10 weeks of FMLA leave remaining. Because expanded family and medical leave is a type of FMLA leave, you would be entitled to take up to 10 weeks of expanded family and medical leave, rather than 12 weeks. And any expanded family and medical leave you take would count against your entitlement to preexisting FMLA leave.

If your employer only becomes covered under the FMLA on April 1, 2020, this analysis does not apply.

45. May I take leave under the Family and Medical Leave Act over the next 12 months if I used some or all of my expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act?

It depends. You may take a total of 12 workweeks of leave during a 12-month period under the FMLA, including the Emergency Family and Medical Leave Expansion Act. If you take some, but not all 12, workweeks of your expanded family and medical leave by December 31, 2020, you may take the remaining portion of FMLA leave for a serious medical condition, as long as the total time taken does not exceed 12 workweeks in the 12-month period. Please note that expanded family and medical leave is available only until December 31, 2020; after that, you may only take FMLA leave.

For example, assume you take four weeks of Expanded Family and Medical Leave in April 2020 to care for your child whose school is closed due to a COVID-19 related reason. These four weeks count against your entitlement to 12 weeks of FMLA leave in a 12-month period. If you are eligible for preexisting FMLA leave and need to take such leave in August 2020 because you need surgery, you would be entitled to take up to eight weeks of FMLA leave.

However, you are entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA. Paid sick leave is not a form of FMLA leave and therefore does not count toward the 12 workweeks in the 12-month period cap. But please note that if you take paid sick leave concurrently with the first two weeks of expanded family and medical leave, which may otherwise be unpaid, then those two weeks do count towards the 12 workweeks in the 12-month period.

46. If I take paid sick leave under the Emergency Paid Sick Leave Act, does that count against other types of paid sick leave to which I am entitled under State or local

law, or my employer's policy?

No. Paid sick leave under the Emergency Paid Sick Leave Act is in addition to other leave provided under Federal, State, or local law; an applicable collective bargaining agreement; or your employer's existing company policy.

47. May I use paid sick leave and expanded family and medical leave together for any COVID-19 related reasons?

No. The Emergency Family and Medical Leave Expansion Act applies only when you are on leave to care for your child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons. However, you can take paid sick leave under the Emergency Paid Sick Leave Act for numerous other reasons.

48. What is a full-time employee under the Emergency Paid Sick Leave Act?

For purposes of the Emergency Paid Sick Leave Act, a full-time employee is an employee who is normally scheduled to work 40 or more hours per week.

In contrast, the Emergency Family and Medical Leave Expansion Act does not distinguish between full- and part-time employees, but the number of hours an employee normally works each week will affect the amount of pay the employee is eligible to receive.

49. What is a part-time employee under the Emergency Paid Sick Leave Act?

For purposes of the Emergency Paid Sick Leave Act, a part-time employee is an employee who is normally scheduled to work fewer than 40 hours per week.

In contrast, the Emergency Family and Medical Leave Expansion Act does not distinguish between full- and part-time employees, but the number of hours an employee normally works each week affects the amount of pay the employee is eligible to receive.

50. How does the “for each working day during each of the 20 or more calendar workweeks in the current or preceding calendar” language in the FMLA definition of “employer” work under the Emergency Family and Medical Leave Expansion Act?

The language about counting employees over calendar workweeks is only in the FMLA's definition for employer. This language does not apply to the Emergency Family and Medical Leave Expansion Act for purposes of expanded family and medical leave. Employers should use the number of employees on the day the employee's leave

would start to determine whether the employer has fewer than 500 employees for purposes of providing expanded family and medical leave and paid sick leave. See [Question 2](#) for more information.

51. I've elected to take paid sick leave and I am currently in a waiting period for my employer's health coverage. If I am absent from work on paid sick leave during the waiting period, will my health coverage still take effect after I complete the waiting period on the same day that the coverage would otherwise take effect?

Yes. If you are on employer-provided group health coverage, you are entitled to group health coverage during your paid sick leave on the same terms as if you continued to work. Therefore, the requirements for eligibility, including any requirement to complete a waiting period, would apply in the same way as if you continued to work, including that the days you are on paid sick leave count towards completion of the waiting period. If, under the terms of the plan, an individual can elect coverage that becomes effective after completing the waiting period, the health coverage must take effect once the waiting period is complete.

52. I am a public sector employee. May I take paid sick leave under the Emergency Paid Sick Leave Act?

Generally, yes. You are entitled to paid sick leave if you work for a public agency or other unit of government, with the exceptions below. Therefore, you are probably entitled to paid sick leave if, for example, you work for the government of the United States, a State, the District of Columbia, a Territory or possession of the United States, a city, a municipality, a township, a county, a parish, or a similar government entity subject to the exceptions below. The Office of Management and Budget (OMB) has the authority to exclude some categories of U.S. Government Executive Branch employees from taking certain kinds of paid sick leave. If you are a Federal employee, the Department encourages you to seek guidance from your respective employers as to your eligibility to take paid sick leave.

Further, health care providers and emergency responders may be excluded by their employer from being able to take paid sick leave under the Act. See [Questions 56-57](#) below. These coverage limits also apply to public-sector health care providers and emergency responders.

53. I am a public sector employee. May I take paid family and medical leave under the Emergency Family and Medical Leave Expansion Act?

It depends. In general, you are entitled to expanded family and medical leave if you are an employee of a non-federal public agency. Therefore, you are probably entitled to paid sick leave if, for example, you work for the government of a State, the District of Columbia, a Territory or possession of the United States, a city, a municipality, a township, a county, a parish, or a similar entity.

But if you are a Federal employee, you likely are not entitled to expanded family and medical leave. The Act only amended Title I of the FMLA; most Federal employees are covered instead by Title II of the FMLA. As a result, only some Federal employees are covered, and the vast majority are not. In addition, the Office of Management and Budget (OMB) has the authority to exclude some categories of U.S. Government Executive Branch employees with respect to expanded and family medical leave. If you are a Federal employee, the Department encourages you to seek guidance from your respective employers as to your eligibility to take expanded family and medical leave.

Further, health care providers and emergency responders may be excluded by their employer from being able to take expanded family and medical leave under the Act. See [Questions 56-57](#) below. These coverage limits also apply to public-sector health care providers and emergency responders.

54. What do I do if my public sector employer, who I believe to be covered, refuses to provide me paid sick leave or expanded family and medical leave?

If you believe that your public sector employer is covered and is improperly refusing you paid sick leave under the Emergency Paid Sick Leave Act or expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act, the Department encourages you to raise your concerns with your employer in an attempt to resolve them. Regardless whether you discuss your concerns with your employer, if you believe your employer is improperly refusing you paid sick leave or expanded family and medical leave, you may call WHD at 1-866-4US-WAGE (1-866-487-9243) or visit www.dol.gov/agencies/whd. Your call will be directed to the nearest WHD office for assistance to have your questions answered or to file a complaint.

In some cases, you may also be able to file a lawsuit against your employer directly without contacting WHD. Some State and local employees may not be able to pursue direct lawsuits because their employers are immune from such lawsuits. For additional information, see the WHD website at: <https://www.wagehour.dol.gov> and/or call WHD's toll free information and help line available 8am–5pm in your time zone, 1-866-4-US-WAGE (1-866-487-9243).

55. Who is a “health care provider” for purposes of determining individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave?

The term “health care provider,” as used to determine individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave, means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

56. Who is a “health care provider” who may be excluded by their employer from paid sick leave and/or expanded family and medical leave?

For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider is anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.

57. Who is an emergency responder?

For the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, an emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to

limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state's or territory's or the District of Columbia's response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.

58. When does the small business exemption apply to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

1. 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;
2. 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
3. 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.

59. If I am a small business with fewer than 50 employees, am I exempt from the requirements to provide paid sick leave or expanded family and medical leave?

A small business is exempt from certain paid sick leave and expanded family and medical leave requirements if providing an employee such leave would jeopardize the viability of the business as a going concern. This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- employer employs fewer than 50 employees;
- leave is requested because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; and
- an authorized officer of the business has determined that at least one of the three conditions described in Question 58 is satisfied.

The Department encourages employers and employees to collaborate to reach the best solution for maintaining the business and ensuring employee safety.

[1] If you are a Federal employee, you are eligible to take paid sick leave under the Emergency Paid Sick Leave Act. But only some Federal employees are eligible to take expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act. Your eligibility will depend on whether you are covered under Title I or Title II of the Family Medical Leave Act. Federal employees should consult with their agency regarding their eligibility for expanded family and medical leave. The Office of Personnel and Management will provide information on federal employee coverage. Additional FAQs regarding public sector employers will be forthcoming.

[2] If you are a Federal employee, the State or local minimum wage would be used to calculate the wages owed to you only if the Federal agency that employs you has broad authority to set your compensation and has decided to use the State or local minimum wage.



Wage and Hour Division

An agency within the U.S.
Department of Labor

200 Constitution Ave NW
Washington, DC 20210
1-866-4-US-WAGE
1-866-487-9243

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HR 6201, the Families First Coronavirus Response Act

Emergency Family and Medical Leave Expansion Act

- Leave would cover employees who are unable to work (or telework) because the employee is caring for their child (18 years or younger) because the school is closed or childcare provider is unavailable due to a public health emergency.
- Leave shall take effect 15 days after enactment of the act and sunset on December 31, 2020.
- Eligible employee is defined as an employee who has been employed for at least 30 calendar days by the employer.
- Employers with 500 or fewer employees would be required to provide the paid leave.
- Employers are not required to pay initial ten days of leave; however, employees may substitute accrued vacation, personal or sick leave to cover unpaid leave portion.
- Employers must pay ten remaining weeks of leave at a rate not less than two-thirds of employee's regular rate, not to exceed \$200 per day and \$10,000 in the aggregate.
- In the case of an employee whose schedule varies from week to week to such an extent an employer is unable to determine with certainty the number of hours the employee would have worked if such an employee had not taken the leave, the employer shall use the following in place of that number:
 - 1) A number equal to the average number of hours that the employee was scheduled per day over the six-month period ending on the date which the employee takes the leave, including hours for which the employee took leave of any type.
 - 2) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.
- Employers that are health care providers or emergency responders may elect to exclude employees from this leave.
- Employers with 25 or fewer employees are not required to restore an employee once leave has been exhausted if the position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer caused by a public health emergency.
- Secretary of Labor has authority to issue regulations to:

- 1) Exclude certain health care providers and emergency responders from the definition of eligible employee; and
- 2) Exempt small businesses with fewer than 50 employees if the above requirements would jeopardize the viability of the business going forward.

Emergency Paid Sick Leave Act

- Employers are required to provide 80 hours of fully paid sick leave to full-time employees (pro-rata rules would apply to part-time employees) on top of any other existing paid leave program of the employer.
- Leave provided under this provision shall take effect 15 days after enactment of this act and made available to covered employees immediately. The leave will sunset on December 31, 2020.
- Private employers with 500 or fewer employees must provide paid sick leave while a public agency or any other entity that is not a private entity or individual and employs 1 or more employees.
 - 1) Private Employers and Public Agency are defined as those engaging in commerce.
- Covered employees eligible for paid sick leave include:
 - 1) Employee subject to a Federal, State, or local quarantine or isolation order related to coronavirus;
 - 2) Employee has been advised by health care provider to self-quarantine due to coronavirus;
 - 3) Employee is experiencing symptoms of coronavirus;
 - 4) Employee is caring for an individual who is subject to an order described in (1) or has been advised as described in (2);
 - 5) Employee is care for their child because the school is closed or childcare provider is unavailable due to coronavirus; or
 - 6) Employee is experiencing a similar condition specified by Secretary of HHS.
- Employers would be required to pay employees their full wages, not to exceed \$511 per day and \$5,110 in the aggregate, for a use described in (1), (2), or (3) above.
- Employers would be required to pay employees two-thirds of their wages, not to exceed \$200 per day and \$2,000 in the aggregate, for a use described in (4), (5), or (6) above.
- Employers are prohibited from retaliating against any employee who takes leave in accordance with the act. Employers that fail to pay required sick leave will be treated as a failure to pay minimum wages in violation of the Fair Labor Standards Act.
- In the case of an employee whose schedule varies from week to week to such an extent an employer is unable to determine with certainty the number of hours the employee

would have worked if such an employee had not taken the leave, the employer shall use the following in place of that number:

- 1) A number equal to the average number of hours that the employee was scheduled per day over the six-month period ending on the date which the employee takes the leave, including hours for which the employee took leave of any type.
 - 2) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.
- Secretary of Labor has authority to issue regulations to:
 - 1) Exclude certain health care providers and emergency responders from the definition of eligible employee; and
 - 2) Exempt small businesses with fewer than 50 employees if the above requirements would jeopardize the viability of the business going forward.

Tax Credits for Paid Sick and Paid Family and Medical Leave

- Private employers with 500 or fewer employees required to provide COVID-19 related paid leave are eligible for a 100 percent refundable payroll tax credit on the wages paid for leave.
- The tax credits would be administered by the IRS and be creditable against employer-side payroll tax liability, with any excess refunded to the employer.
- Tax credits for COVID-19 related pay sunset on December 31, 2020.

Emergency Unemployment Insurance Stabilization and Access Act

- Expands unemployment benefits and provides \$1 billion in 2020 for emergency grants to states for activities related to processing and paying unemployment insurance (UI) benefits related to COVID-19.
- \$500 million would be transferred to the states within 30 days after the enactment of the bill upon certification by the Secretary of Labor to the Secretary of the Treasury (so long as the state complies with certain requirements, such as requiring employers to notify employees of the availability of unemployment compensation and permitting individuals to apply for unemployment compensation in at least two of the following ways—in-person, by phone, or online).
- The remaining \$500 million of the grant would be reserved for states in which the number of unemployment compensation claims has increased by at least 10% over the previous calendar year. To receive access to the second portion of the grant, states must, among other things, make it easier for individuals to obtain unemployment compensation by taking steps to temporarily ease eligibility requirements that are limiting access to UI

during the COVID-19 outbreak, like work search requirements, required waiting periods, and requirements to increase employer UI taxes if they have high layoff rates.

Health Care (Applicable to Private Health Plans)

- Establishes requirements for private healthcare plans to provide COVID-19 diagnostic testing and related visits at no cost to consumers. This includes coverage for the cost of a provider, urgent care center or emergency room visit in order to receive testing.

The Coronavirus Aid, Response, and Economic Security Act “CARES Act”

Health Care

- Clarifies that all testing for coronavirus (COVID-19) is to be covered by private insurance plans (fully-insured and self-insured) without cost sharing. Coverage extends to any services or items provided during a medical visit—including an in-person or telehealth visit to a doctor’s office, an urgent care center, or an emergency room—that results in coronavirus testing or screening. This coverage requirement began on March 18 (when Families First Coronavirus Response Act was enacted) and remains in effect only while there is a declared public health emergency (as defined under federal law).
- For private health insurance plans, the bill broadens the testing that would be covered without cost-sharing beyond FDA-approved testing to include 1) tests provided by clinical labs on an emergency basis (including public health labs); and 2) state-developed labs.
- Changes the use of health savings accounts (HSAs) paired with high-deductible health plans (HDHPs). Allows a high-deductible health plan (HDHP) with a HSA to cover telehealth services prior to a patient reaching the deductible. This means that telehealth and other remote care services could be covered pre-deductible without violating federal rules for HDHPs paired with an HSA. This provision is temporary and will sunset December 31, 2021 unless Congress takes future action to extend or make permanent.
- Inclusion of certain over-the-counter medical products as qualified expenses. Allows patients to use funds in HSAs, Flexible Spending Accounts, Archer medical savings accounts and health reimbursement arrangements for the purchase of over-the-counter medical products, including those needed in quarantine and social distancing, without a prescription from a physician. This change would apply for amounts paid or expenses incurred after December 31, 2019.
- Allows HSAs (and the similar arrangements noted above) to be used to pay for certain menstrual care products, such as tampons and pads. These products would be treated as qualified medical expenses for purposes of these arrangements. This change would apply for amounts paid or expenses incurred after December 31, 2019.

Benefits

- Allows an employee who was laid off by an employer March 1, 2020, or later to have access to paid family and medical leave in certain instances if they are rehired by the employer. The employee would have had to work for the employer at least 30 days prior to being laid off.

- Allows employers to receive an advance tax credit from the Department of Treasury instead of having to be reimbursed on the back end. Creates regulatory authority to implement tax credit advancements.
- Amends Section 518 of ERISA to provide the Department of Labor the ability to postpone certain ERISA filing deadlines for a period of up to one year in the case of a public health emergency.
- Provides single employer pension plan companies with more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until January 1, 2021. At that time, contributions due earlier would be due with interest. The bill also provides that a plan's status for benefit restrictions as of December 31, 2019, will apply throughout 2020.
- Ensures that federal contractors who cannot perform work at their duty-station or telework because of the nature of their jobs due to COVID-19, continue to get paid.

Unemployment Insurance

- Creates a new Pandemic Unemployment Assistance program (through December 31, 2020) to help those not traditionally eligible for Unemployment Insurance (UI), including self-employed individuals, independent contractors, those with limited work history and those who are unable to work as a result of the coronavirus public health emergency. Pays 50% of the unemployment insurance costs incurred by state, local and tribal governments and non-profit organizations, not part of the UI system.
- Provides additional \$600/week payment to each UI or Pandemic Unemployment Assistance recipient through the end of July 2020.
- Provides funding for the 1st week of unemployment for states to waive the traditional "waiting week" before benefits begin.
- Provides an additional 13 weeks of unemployment to help those who remain unemployed after weeks of state unemployment are no longer available.
- Provides states with temporary, limited flexibility to hire temporary staff or re-hire former staff to quickly process unemployment claims.
- Provides funding to states to help them maintain short-time compensation programs to prevent layoffs, as well as expand these work sharing programs in the future.

Retirement

- Waives the 10% tax on early withdrawals up to \$100,000 from a retirement plan or IRA (made on or after January 1, 2020) for an individual who is diagnosed with COVID-19; whose spouse or dependent is diagnosed with COVID-19; who experiences adverse

financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19; or other factors as determined by the Treasury Secretary.

- Permits individuals to pay tax on the income from the distribution over a three-year period and allows individuals to repay that amount tax-free back into the plan over the next three years. Those repayments would not be subject to the retirement plan contribution limits.
- Doubles the current retirement plan loan limits to the lesser of \$100,000 or 100% of the participant's vested account balance in the plan. Individuals with an outstanding loan from their plan with a repayment due from the date of enactment of the CARES Act through Dec. 31, 2020, can delay their loan repayment(s) for up to one year.
- Retirement plans can make amendments and adopt these rules immediately, even if the plan does not currently allow for hardship distributions or loans, provided the plan is amended on or before the last day of the first plan year beginning on or after Jan. 1, 2020, or later if prescribed by the Treasury Secretary.
- Waives the required minimum distribution rules for accountholders who are age 70-1/2 or older that are subject to mandatory minimum distributions for certain defined contribution plans and IRAs for calendar year 2020. This provision provides relief to individuals who would otherwise be required to withdraw funds from such retirement accounts during the economic slowdown due to COVID-19.

Business Provisions

- Allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. All employers are responsible for paying a 6.2% Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The Social Security Trust Funds will be held harmless under this provision.
- Provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50% when compared to the same quarter in the prior year.
 - For employers with more than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances.

- For employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.
- The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee and is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.
- Employers (of any size) may apply for relief loans due to COVID-19. One requirement (among others) for loan recipients is to maintain employment levels as of March 24, 2020 through September 30, 2020, to the extent practicable, and in any case shall not reduce their employment levels by more than 10% from the levels on such date the loan is acquired.
- Employers with 500 or fewer employees are eligible to receive a loan to cover costs incurred by the employer between February 15 and June 30. For purposes of counting the number of employees that are employed, the term “employee” includes full-time employees, part-time employees, and individuals employed on “other basis,” like seasonal or temporary.
 - Loan to support, among other things, wages, cash tip equivalents, the cost of health benefits, the cost of retirement benefits, the cost of leave (e.g., vacation, family, and sick leave), or the payment of State or local taxes assessed on employee compensation. The loan can also be used to pay mortgage interest, rent, utility bills, and premiums for COBRA.
 - Defines eligibility for loans as a small business, 501(c)(3) nonprofit, a 501(c)(19) veteran’s organization, or Tribal business concern described in section 31(b)(2)(C) of the Small Business Act with not more than 500 employees, or the applicable size standard for the industry as provided by SBA, if higher. Self-employed individuals are also eligible to receive a loan.
 - Small businesses may take out loans through December 31, 2020 and cover employees making up to \$100,000 per year; loans taken for this purpose may be forgiven if the business maintains an average monthly number of employees during the covered period (between February 15 and June 30) that is no less than the number it had before the crisis began, among other requirements. Firms that have laid off employees may qualify for forgiveness if employees are rehired by April 1, 2020.
 - The cost of participation in the program would be reduced for both borrowers and lenders by providing fee waivers, an automatic deferment of payments for one year, and no prepayment penalties.
- Midsize to large employers (500 to 10,000 employees) including nonprofit organizations may qualify for loans related to losses incurred as a result of COVID-19. Loan borrowers

will not be required to pay principal or interest towards the loan for the first six months or longer at the discretion of the Treasury Secretary. Loan recipients must retain at least 90% of the workforce, at full compensation and benefits, until September 30, 2020, among other requirements.

Education Assistance

- Allows employers to provide a student loan repayment benefit to employees on a tax-free basis. Under the provision, an employer may contribute up to \$5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The \$5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.