



How to Calculate the New Types of Paid Leave under the FFCRA

*The original FFCRA was in effect from April 1 - December 31, 2020 and was a mandatory federal law. UPDATE: The FFCRA was not officially extended in the most recent COVID-relief legislation, but covered employers may now **choose** to offer the same COVID-related sick leave which was in effect under the law. If employers elect to provide and pay for the FFCRA-leave from January 1 to March 31, 2021, the company will be eligible for the same tax credits.*

Analysis of types of paid leave under Families First Coronavirus Response Act

- **Applicable to Employers with up to 500 employees** (and those small businesses with up to 50 employees who do *not* qualify for an exemption to FFCRA)
- **Applicable if the company has work or telework available to be performed by the employees.**
- **Total Leave period is a maximum of 12 weeks, and their job is protected during this time.**

1 If a Full Time Employee is unable to work or telework because:

- a. They are under Federal/state/local quarantine or isolation order related to COVID-19;
- b. They are advised by health care provider to self-quarantine due to COVID-19 concerns; OR
- c. They are experiencing COVID-19 symptoms and seeking a diagnosis,
- d. They are caring for an individual who is subject to federal/state/local quarantine or isolation order or advised by health care provider to self-quarantine due to COVID-19 concerns;
- e. They are caring for their child, if the child’s school or place or care is closed or the child’s care provider is unavailable due to public health emergency; or
- f. They are experiencing any other substantially similar conditions specified by the Sec. of Health & Human Services in consultation with the Sec. of Treasury and Sec. of Labor.

THEN: Employer must pay Emergency Paid SICK LEAVE.

How long?	Employee (self) is affected See: 1(a) – (c) above	Employee is Caring for Others See: 1(d) – (f) above
<ul style="list-style-type: none"> • 10 workdays (2 weeks) 	<ul style="list-style-type: none"> • Regular rate of pay • Up to \$511/day (\$5,110) 	<ul style="list-style-type: none"> • Two-thirds the Regular rate of pay • Up to \$200/day (\$2,000)

2 If a Full Time Employee is unable to work or telework and needs to take LEAVE because:

- a. The employee needs to care for a son or daughter under the age of 18, if the school or place of care has been closed (due to COVID-19), or the child care provider is unavailable, due to public health emergency (i.e., Mom is a doctor working at the hospital, Dad needs to take leave from work to care for minor children).

THEN: Employer must pay Emergency Family and Medical LEAVE/CHILDCARE LEAVE.

First 10 workdays (2 weeks)	Up to an additional 10 weeks
<ul style="list-style-type: none"> • Can be unpaid leave. • Note: Employee can choose to substitute any other paid leave (including SICK LEAVE provided by this Act) 	<ul style="list-style-type: none"> • Employer must pay two-thirds the Regular Rate of Pay, CAPPED at \$200/day or \$10,000 in the aggregate per employee

3 If a Part-Time / Irregular Schedule Employee is unable to work or telework because:

- a. They are under Federal/state/local quarantine or isolation order related to COVID-19;
- b. They are advised by health care provider to self-quarantine due to COVID-19 concerns;
or
- c. They are experiencing COVID-19 symptoms and seeking a diagnosis,
- d. They are caring for an individual who is subject to federal/state/local quarantine or isolation order or advised by health care provider to self-quarantine due to COVID-19 concerns;
- e. They are caring for their child, if the child’s school or place or care is closed or the child’s care provider is unavailable due to public health emergency; or
- f. They are experiencing any other substantially similar conditions specified by the Sec. of Health & Human Services in consultation with the Sec. of Treasury and Sec. of Labor.

THEN: Employer must pay Emergency Paid SICK LEAVE.

First 10 workdays (2 weeks)	Employee (self) is affected See: 1(a) – (c) above	Employee is Caring for Others See: 1(d) – (f) above
<ul style="list-style-type: none"> • 10 workdays (2 weeks) 	<ul style="list-style-type: none"> • Regular rate of pay • Up to \$511/day (\$5,110) 	<ul style="list-style-type: none"> • Two-thirds the Regular rate of pay • Up to \$200/day (\$2,000)

4 If a Part-Time / Irregular Schedule Employee is unable to work or telework and needs to take LEAVE because:

- a. The employee needs to care for a son or daughter under the age of 18, if the school or place of care has been closed (due to COVID-19), or the child care provider is unavailable, due to public health emergency (i.e., Mom is a doctor working at the hospital, Dad needs to take leave from work to care for minor children).

THEN: Employer must pay Emergency Family and Medical LEAVE/CHILDCARE LEAVE.

Part-Time	Variable/Irregular Schedule
<ul style="list-style-type: none"> • For the “average hours the employee works over a 2-week period” 	<ul style="list-style-type: none"> • For the “average hours the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave, including any hours for the which the employee took leave of any type.” <p>If less than 6 months of work history:</p> <ul style="list-style-type: none"> • “Reasonable expectation of the employee at the time of hiring”

- 5 If the company already offered any kind of PAID LEAVE prior to FFCRA, the leave provided under FFCRA is in addition to the company's sick leave option.**
- Employers “may not change” their current paid leave policies in order to avoid the impact of the law.
 - In addition, employers may not require employees to take/exhaust any of their employer-provided leave time before taking emergency paid sick leave time under the FFCRA.
 - Employers also may not require employees who take emergency paid sick leave to find any replacement employees to take the absent employees' place at work during their absence.
- 6 Companies with fewer than 25 employees – Under the previous version of FMLA, employers must restore employees who take public health emergency leave to their previous position or an equivalent position upon their return from leave.**

NOW: the FFCRA relaxes this requirement in certain circumstances for employers who employ fewer than 25 employees. In particular, those smaller employers do not need to restore an employee to his or her job following public health emergency leave if:

- 1) 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 (i) that affect employment; and (ii) are caused by a public health emergency during the period of leave”;
 - 2) the employer makes “reasonable efforts” to restore the employee to an equivalent position; and
 - 3) if the employer's “reasonable efforts” fail, the employer makes “reasonable efforts” to contact the employee if an equivalent position becomes available during the following year.
 - DOL intends to allow a 30-day compliance period for Employers to meet their obligations under the FFCRA before it will pursue any enforcement actions against noncompliant Employers, so long as the employer acted in good faith in an effort to comply with the statute.
- 7 All of these expanded FMLA requirements expire at the end of 2020 and become voluntary beginning January 1, 2021. If employers choose to provide leave, they are eligible for tax benefits through March 31, 2021. State and local laws may vary.**
- 8** Employers with staff located outside of North Carolina should be aware of local state and municipal laws which may require paid, job-protected sick leave. Several states and municipalities passed their own COVID-sick leave requirements which may remain in effect for 2021. *For example, Colorado, New Jersey, Oregon, the District of Columbia and several cities in California have extended FFCRA-like benefits to employers not covered by the federal law.*

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