

Families First Coronavirus Response Act (FFCRA) 2nd Coronavirus Relief Package (March 18, 2020)

Common Provisions

1. **Effective Dates:**
April 2, 2020 to December 31, 2020
2. **Employer Threshold:**
Employers with fewer than 500 employees, including tax-exempt organizations
3. **Exempt Employer:**
Employers with fewer than 50 employees when the imposition of such requirements would jeopardize the viability of the business as a going concern
4. **Eligible Employee:**
Employee is unable to work (or telework) due to a need for leave because:
 - a. The employee ...
 - i. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19
 - ii. has been advised by a health care provider to self-quarantine due to concerns related to COVID-19
 - iii. experiencing symptoms of COVID-19 and seeking a medical diagnosis
 - b. The employee is ...
 - i. caring for an individual who is subject to an order or has been advised as described in paragraph (a)(i) & (ii), above
 - ii. caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions
 - iii. experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor
5. **Excepted Employee:**
 - a. Certain Health care provider employees
 - b. Certain Emergency responder employees

The Emergency Paid Sick Leave Act

6. **Duration of Paid Sick Time:**
 - a. For full-time employees - 80 hours (2 weeks)
 - b. For part-time employees with –

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- i. Regular Scheduled Hours - number of hours that such employee works, on average, over a 2-week period
- ii. Sporadic Hours – special calculation methods

7. Sick Leave Wages:

- a. For a use described in (a)(i), (ii) & (iii) –
 - i. Regular pay up to \$511 per day and \$5,110 in the aggregate
- b. For a use described in (b)(i), (ii) & (iii) –
 - i. 2/3 of regular pay up to \$200 per day and \$2,000 in the aggregate

The Emergency Family and Medical Leave Expansion Act (Emergency FMLA Act)

8. Additional Employee Qualification:

Employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested

9. Duration of Emergency Family and Medical Leave:

- a. Unpaid leave for initial 10 days (2 weeks) (employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave, including paid sick leave as provided by this Act)
- b. Paid leave for up to 50 additional days (10 weeks)
- c. Leave under both the FMLA & the FFCRA is limited to 12 weeks total

10. Family Leave Wages:

- a. For a use described in (b)(ii) –
 - i. 2/3 of regular pay up to \$200 per day and \$10,000 in the aggregate

Tax Credits for Paid Sick and Paid Family and Medical Leave

11. Ineligible Employers for Tax Credit:

Government Employers

12. Amount of Employment Tax Credit:

- a. 100 % of the qualified sick leave wages paid (amount paid, subject to the cap) from 4/2/2020 to 12/31/2020
- b. 100 % of the qualified family leave wages paid (amount paid, subject to the cap) from 4/2/2020 to 12/31/2020

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- c. Qualified wages include pro-rata share of employer's qualified expense for continuing health care coverage during the federally mandated sick and child care leave period
- d. The credit is allowed against employer's share of the 6.2% Social Security tax imposed on all wages paid
- e. Fully refundable
- f. If the payroll tax off-set is not sufficient to cover 100% of those costs, employers can –
 - i. *retain* an amount of payroll taxes equal to qualified sick leave wages and qualified family leave wages paid, rather than deposit the taxes
 - ii. *request* an advance of their tax credit for any remaining amount using Form 7200, Advance Payment of Employer Credits Due to COVID-19
- g. The federal employment taxes, with respect to all employees, that are available for retention, include –
 - i. federal income taxes withheld from all employees' pay;
 - ii. the employees' share of Social Security and Medicare taxes; and
 - iii. the employer's share of Social Security and Medicare taxes.

13. Tax Credit for certain Self-Employed Individuals:

- a. Equivalent tax credit against Self Employment tax
- b. Qualified amount is product of –
 - i. Net earnings from self-employment for the taxable year, divided by 260
 - ii. Applicable number of days
- c. Fully refundable
- d. Need documentation
- e. Will deduct their tax credits from their estimated tax payments or can claim a refund on their federal income tax return (i.e., their 2020 Form 1040).

14. Non-Enforcement Period:

- a. The U.S. Department of Labor will issue a temporary non-enforcement policy that through April 20, the Labor Department will not bring any enforcement action against any employer for violating the Act, so long as the employer acted reasonably and in good faith to comply with the Act.

Interaction with Payroll Protection Program Loan (PPPL)

15. PPPL & FFCRA:

- a. Payroll Costs for PPPL exclude –
 - i. qualified sick leave wages for which a credit is allowed under Section 7001 of the FFCRA; and
 - ii. qualified family leave wages for which a credit is allowed under Section 7003 of the FFCRA.

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Interaction with Taxes

16. Taxes & FFCRA:

- a. Qualified sick leave wages and qualified family leave wages, are subject to withholding of –
 - i. Federal Income Tax
 - ii. Social Security Tax (employee’s share only)
 - iii. Medicare Tax
- b. Qualified sick leave wages and qualified family leave wages, are also considered wages for purposes of other benefits that employer may provide – salary reduction contributions to the employer’s group health plan, 401(k) plan...
- c. Refundable tax credits are included in employer’s gross income with a corresponding tax deduction for qualified wages (including allocable qualified health plan expenses and employer Medicare tax) in the taxable year such expenses are paid or incurred
- d. If employer pays employees in excess of the FFCRA requirements, they will not be able to claim, nor receive tax credit for, those amounts in excess of the FFCRA’s statutory limits