

## Families First Coronavirus Response Act (FFCRA)

Effective Date: April 1, 2020

### 1. Emergency Paid Sick Leave Act

- a. In a nutshell: The Act provides employees with paid sick leave – in addition to any other leave that the employee may be entitled to – that can be used for qualifying COVID 19 reasons.

### 2. Looking Under the Hood: (Statute and now DOL Q&A)

- a. [https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#\\_ftn1](https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#_ftn1)
- b. What is the Time Frame during which FFCRA sick leave is available? Now through December 31, 2020.
- c. Amount of Paid Sick Leave Under the Act:
  - i. Generally, 80 hours for full time employees.
  - ii. Pro-rated/averaged for part time employees.
  - iii. NOTE: The Department of Labor states that generally the sick leave can only be used in full day increments (in keeping with the underlying policy of trying to keep people who should be home ... home). This general rule is subject to exceptions as may be agreed upon between the District and the employee.

- iv. NOTE: An exception to DOL's full day increment use rule allows for intermittent use of the sick leave for childcare but even that is subject to employer approval.

d. Employee Eligibility:

- i. All employees are eligible for the FFCRA sick leave.
- ii. There is no qualifying period of employment required.

e. Qualifying Events for Sick Leave Use – there are 6 qualifying events for which the leave can be used. Different events have different cost impacts.

- i. The events that allow for FFCRA sick leave use are:
  1. The employee is subject to a federal, state or local quarantine order related to COVID 19.
  2. The employee has been advised by a health care provider to self-quarantine due to COVID 19 concerns.
  3. The employee has COVID 19 symptoms and is seeking medical diagnosis.
  4. The employee is caring for an individual who is subject to a quarantine order or has been advised by a medical provider to self-quarantine related to COVID 19.

5. The employee is caring for a child if the school or childcare of the child is closed or unavailable due to COVID 19.
6. The employee is experiencing some other condition as may be determined by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor.

ii. NOTES from Your Friends at the Department of Labor:

1. The employer can require documentation to support the request for FFCRA sick leave. Documentation may include a quarantine order, a notice of school closure, a medical provider's note.
2. FFCRA sick leave may not be used for work closure or temporary layoffs. DOL is clear that FFCRA sick leave is allowed only when the employer has work for the employee (whether on-site or telework) and the employee cannot perform the work because of a qualifying event.
3. If an employer and employee are affected by a shelter-in-place or "hunker down" order, ~~FFCRA sick leave is not available. These governmental orders are not qualifying events under FFCRA sick leave act.~~ [NOW – 7-23-20 – See DOL Guidance, Q. 87: For purposes of FFCRA, a federal, state, or local quarantine or isolation order includes shelter

in place or stay at home orders. See Q.87 for additional guidance.]

4. An employee cannot use FFCRA sick leave to cover a reduction of hours of available work from the employer.

f. The Value of FFCRA Sick Leave:

i. Let's start with the basics – for a full-time employee, take the regular per hour wage and multiply by the number of hours normally scheduled to work in a day. [There are other rules for part-time employees.]

ii. BUT, FFCRA sick leave is CAPPED as follows:

1. If the FFCRA sick leave is for reasons 1, 2, or 3 (above), each FFCRA sick leave day is capped at \$511/day (or an aggregate total of \$5,110).

2. If the FFCRA sick leave is for reasons 4, 5, or 6 (above), each FFCRA sick leave day is capped at \$200/day (or an aggregate total of \$2,000).

iii. So, the employee gets his/her regular wage unless it exceeds the CAP amounts noted above in which case, the employee would get the CAP amount.

iv. BUT, there is a "Special Rule for Care of Family Members" that applies to reasons 4, 5, or 6. In this case, the employee is entitled not to his/her regular wages for the day but, instead, 2/3 of the

regular wages (or the CAP amount, whichever is less).

v. NOTES from Your Friends at the Department of Labor:

1. Neither an employer nor an employee can “top off” FFCRA sick leave with other accrued leaves unless both the employer and employee agree.

g. How Long Must an Employee Take FFCRA sick leave?

- i. The DOL states: 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.

- h. FFCRA sick leave does not address or impact telework: “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.”

- i. Can an employer require an employee to use other accrued leave prior to using FFCRA sick leave? **NO**  
(Finally, a simple straight answer! 😊)
- 3. The Department of Labor (Field Assistance Bulletin), March 24, 2020: The DOL will not bring any enforcement actions related to violations of FFCRA sick leave between March 18 and April 17 so long as the violations are not willful.

