



March 31, 2020

Families First Coronavirus Response Act (FFCRA) H.R. 6201, signed into law March 18, requirements **go into effect April 1**, expires December 31, 2020.

- Applies to businesses with fewer than 500 employees.
- Federal Paid Sick Leave
 - Employee entitled to paid leave if:
 - Employee is under quarantine order because of COVID-19
 - Employee has been advised by a healthcare provider to self-quarantine over COVID-19
 - The employee is experiencing symptoms related to COVID-19 and is seeking a medical diagnosis
 - The employee is caring for an individual under a quarantine (they do not need to be a relative).
 - The employee is caring for their child whose school or daycare has been closed.
 - For full-time employees, the paid sick leave is 80 hours (2 weeks). For part-time workers (defined as less than 40 hours a week for the purposes of this law) they are entitled to the average number of hours worked in a two-week period. If they are not on a regular schedule, then look at the prior six months and determine the average number of hours worked per day and extend that over 2 weeks. If they were hired less than 6 months ago, then it is based on the average number of hours they would normally be scheduled to work over a two-week period.
 - If the employee is using the leave for one of the first three reasons (they themselves are affected) they must be paid their regular wages, up to \$511 per day and an aggregate of \$5,110.
 - If they are using the leave for the last two reasons (caretaking of someone else), then they are owed two-thirds of their regular pay, up to \$200 per day and an aggregate of \$2,000.
 - The employer cannot require an employee to find a replacement.
- Expansion of federal Family and Medical Leave Act (FMLA)
 - FMLA currently only applies to businesses with at least 50 employees. New benefits apply to all businesses with under 500 employees. The employee needs to have been employed for 30 days.
 - An employee who was laid off but rehired is still eligible, the clock does not “reset”

- Covers an employee unable to work due to a need to care for a child under the age of 18 whose school has been closed or paid child care is unavailable due to a public health emergency. This is the only reason that this type of leave is required.
- 12 weeks of leave, 1st 10 days are unpaid but the employee may use other paid time, including the new federal sick leave and/or NJ paid sick leave.
- Full time employees: Pay is 2/3 regular pay for 40 hours a week, up to \$200 per day and \$10,000 total.
- Part-Time employees: Pay rate is 2/3 regular rate, the number of hours per week is determined by the average number of hours worked per week for the prior six months, up to \$200 per day and \$10,000 total.
- Intermittent Leave?
 - If you have an employee who qualifies for **paid sick leave due** to fact-specific reason, and that employee is NOT able to "telework" (but must be working on site), they may not take their paid sick leave benefit intermittently.
 - However, if you as the employer agree, your employee may take paid sick leave intermittently if the employee is taking care for a child (school or daycare closures).
 - In terms of **expanded family and medical leave**, if your employee is NOT able to "telework," an employee is able to take intermittent leave with the employer's approval (for purposes of taking care of a child due to school, daycare closures, etc).
 - Please see [Q&A Nos. 21 and 22](#) for further information and fact-specific details.
- Businesses with under 50 employees can get exempted by the Secretary of Labor if the requirements would jeopardize the viability of the business.
 - The exemption will only be granted if the leave is being requested to take care of a child whose school is closed, it will not be granted for concerns related directly to COVID-19
 - Employer determines that at least one of the following is true:
 - Paying for the leave would result in the business's expenses exceeding available revenue and cause the business to stop operating at a minimal capacity.
 - The absence of the employee would be a "substantial risk" to the financial health or operational capabilities of the business because of their specialized skills, knowledge of the business, or responsibilities.
 - There are not sufficient workers available to keep the business open at a minimal capacity.
- This paid leave is in addition to all forms of leave mandated by the State of New Jersey, and is in addition to any leave provided by the business's existing policies.
 - An employee may choose to supplement this new federal leave with existing leave (in order to get their full salary instead of 2/3) but they cannot be forced to. You may want to encourage them to do this in order for them to burn through their accrued leave. The

employee is not entitled to use other forms of leave as a supplement, the employer can deny their request if they choose.

- Employees' Rights
 - An employee who takes this leave is entitled to the same or an equivalent position upon return from the leave they use.
 - Except that a business with under 25 employees is exempt if the position has been eliminated as a result of the economic hardships of the pandemic and there is no equivalent position available.
 - The employee cannot in any way be punished for using the leave.
 - An employee is NOT protected from layoffs or from the closing of the business, as long as the action is one which would have affected the employee regardless of whether they took the leave.
- Tax credits
 - The employer can take a tax credit against their share of the Social Security payroll tax for 100% of the money paid out in these new forms of leave. IRS is developing more rules on this.
 - Tax credits are based on amount paid in each calendar quarter
 - Tax credits are refundable, so if tax liability is less than the cost of the leave, the employer will be fully refunded the balance.
 - Tax credits also extend to amounts paid or incurred to maintain health coverage.
 - An employer is free to pay an employee more than is required, but that excess cost will not be reimbursed in the tax credit.
- Employer Notice
 - A notice of these benefits must be posted in the workplace
 - If the workplace is closed then you must email or regular mail it to all employees.
 - New hires must be given the notice from April 1 through the end of this year.
 - You can download the official notice here:
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- Penalties
 - Employers who do not comply will be subject to the regular penalties for violation of the Fair Labor Standards Act, however, the Department will be observing a period of “non-enforcement” until about April 17, as long as an employer is only violating in good-faith and fixes their error immediately.
- **If you have other questions we encourage you to visit the Department of Labor’s extensive Q&A found here: [Families First Coronavirus Response Act: Questions and Answers](#)**