



RE: Families First Coronavirus Response Act (2020)

DATE: March 30, 2020

Overview

The Families First Coronavirus Response Act (FFCRA) was passed by the United States House of Representatives in the early morning hours of March 14, 2020. The Senate followed suit, passing the FFCRA, including technical amendments, on the afternoon of March 18, 2020. The President signed the FFCRA into law that same day, meaning it will go into effect in 15 days. The FFCRA is one of what appears will be a number of pieces of federal legislation coming from Washington designed to deal with the unprecedented events triggered by the outbreak of COVID-19.

Divisions A, B, D and H of the FFCRA do not directly impact employers, although some provisions do impact schools. These Divisions include provisions for, among other things:

Division A

- Includes additional appropriations for the Food and Nutrition Services, Special Supplemental Nutrition Program for Women, Infants and Children, including a provision allowing any child eligible for a free or reduced price meal whose school is closed for at least 5 consecutive days during a public health emergency to receive assistance pursuant to a state plan.

Division B

- Provides for states to obtain waivers to school lunch requirements for purposes of providing meals and meal supplements during school closure due to COVID-19.
- Provides waivers to school lunch and adult care food program requirements, including to allow non-congregate feeding and exceptions to meal patterns if necessary to provide meals or due to supply chain disruption.

Division D

- Allocates \$1,000,000,000 in emergency grants for states for activities related to the administration and continued operation of Unemployment Insurance Programs.

Divisions C, E, F and G directly impact employers and employees as described below.

Division C – Emergency Family Medical Leave Act

Division C expands the coverage of the Family and Medical Leave Act (“FMLA”) as follows:

1. An “eligible employee” means an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested.
2. The “employer threshold” includes those employers with “fewer than 500 employees”.
3. A “qualifying need related to a public health emergency” means that an employee has need for leave for one of the following reasons:
 - a. The employee is unable to work (or telework) due to a bona fide need¹ for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed or child care is unavailable
4. The first 10 days for which an employee takes leave under this section may consist of unpaid leave, but the employee may substitute vacation, personal or sick leave.
5. An employer must provide paid leave for each day of leave that an employee takes after taking leave for 10 days.
6. Provides up to an *additional* 10 weeks of paid expanded family and medical leave beyond the leave provided in Division E for eligible employees.
7. The paid leave amount equals two-thirds of the employee’s regular rate of pay for the number of hours the employee would otherwise be normally scheduled to work needs is capped at \$200/day or \$10,000 in the aggregate.
 - a. For employees with variable hours, look at the number equal to the average number of hours worked over a 6-month period.

Division E – Emergency Paid Sick Leave Act

Division E modifies the requirements of paid sick leave and provides emergency paid sick leave with the following conditions:

1. An employer shall provide an employee with paid sick time for any of the following uses:
 - a. Employee is subject to a self-isolation or quarantine order from a government.
 - b. Employee has been advised by a health care provider to self-quarantine.

¹ Pursuant to Federal, State, or local government order or advice of a health care provider.

- c. Employee has COVID-19 symptoms and is seeking a medical diagnosis.
 - d. Employee is caring for someone in 1a or 1b above.
 - e. Employee is caring for a child whose school is closed and childcare provider is not available due to COVID-19 precautions.
 - f. Employee is experiencing similar conditions and as specified by Secretary of Health and Human Services.
2. Paid Sick Leave Benefits
- a. Two weeks (up to 80 hours) of paid sick leave at the 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), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
 - b. Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee’s regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to a 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, and/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.
3. Paid sick leave available to employees shall be limited to \$511/day or \$5,111 in the aggregate if the employee is home due to his/her own isolation/quarantine and limited to \$200/day or \$2000 in the aggregate if the employee is home caring for a family member with the virus or due to a child’s school closure.

REASON	Self Quarantine or Quarantine Order	Caring for Family Member	School Closure
DAY RATE	\$511	\$200	\$200
AGGREGATE	\$5,111	\$2,000	\$2,000

- 4. Full-time employees are entitled to 80 hours of paid sick time.
- 5. Part-time employees are entitled to the number of hours that such employee works on average over a 2-week period.
- 6. There is no carryover of this sick time from one year to the next.
- 7. This paid sick leave is in addition to any paid sick leave already offered by an employer.
- 8. An employer may not require that the employee search for or find a replacement employee to cover the hours in which the employee is using paid sick time.

9. Paid sick time is available regardless of how long the employee has been employed by an employer.
10. An employer may not require an employee to use other paid leave before using the paid sick time.
11. Each employer is required to post a notice regarding this paid sick leave, to be provided by the Secretary of Labor.
12. Employers are prohibited from discharging or disciplining an employee who takes a leave in accordance with the Act.
13. An “Employer” under this provision is
 - a. in the case of a private entity or individual, one that employs fewer than 500 employees
 - b. in the case of a public agency or other entity not private, employs 1 or more employees.

Division F – Health Insurance

Division F mandates that health insurance providers must cover the following:

1. Establishes requirements for providing coronavirus diagnostic testing at no cost to consumers.
2. Private healthcare plans required to provide no-cost coverage for COVID-19 diagnostic testing, including the cost of a provider, urgent care center or emergency room visit in order to receive testing.
3. Waives Medicare, Medicare Advantage, Medicaid and CHIP cost-sharing requirements for COVID-19 visits.
4. Treats personal respiratory protective devices as covered countermeasures that are eligible for certain liability protections.
5. Temporarily increases the Medicaid federal medical assistance percentage (“FMAP”).

Division G – Tax Credits

Division G provides a number of tax credits for employers as a result of the new expenses mandated by this law. For tax-exempt corporations, the only item of note is that any wages required to be paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act shall not be considered wages for purposes of IRC 3111(a).