

# Families First Coronavirus Response Act (FFCRA)

## Frequently Asked Questions

The answers provided in these FAQs are based on current guidance from the U.S. Department of Labor (DOL). The answers may change with the release of additional DOL guidance.

### 1. What is the Families First Coronavirus Response Act (FFCRA)?

The Families First Coronavirus Response Act was enacted into law on March 18, 2020 and became effective on April 1, 2020. While the Act has many provisions addressing the impact of the COVID-19 outbreak, there are two key provisions that apply to the State as an employer:

Expanded Family and Medical Leave Act. This provision adds a qualifying reason that an employee is eligible for up to 12 weeks of job-protected family and medical leave if the eligible employee is unable to work or work from home because the employee must care for a son or daughter under the age of 18 (or a son or daughter over the age of 18 and incapable of selfcare due to a mental or physical disability) because of a school closure or loss of childcare due to a public health emergency. To be eligible, the employee must be employed for at least 30 calendar days. While the first 10 days of the expanded family and medical leave may be unpaid, after those 10 days employers must provide 2/3<sup>rd</sup> of the employee's regular pay rate up to a cap of \$200.00 per day, or \$10,000.00 in the aggregate.

An employee may choose to use his or her accrued leave and therefore not be subject to the statutory cap.

Emergency Paid Sick Leave Act. This provision provides for two weeks of emergency paid sick leave for the six qualifying reasons (listed below) relating to absences caused by COVID-19. The Act allows an employee to take leave due to an inability to work or work from home because the employee is:

1. Subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. Advised by a health care provider to self-quarantine due to COVID-19 concerns;
3. Experiencing COVID-19 symptoms and seeking medical diagnosis;
4. Caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
5. Caring for the employee's son or daughter (under age of 18 or over the age of 18 and incapable of self-care) if the child's school or place of care is closed or the

- child's care provider is unavailable due to public health emergency; or,
6. 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.

The 80 hours of emergency paid sick leave must be provided at the employee's regular rate of pay for reasons 1,2, and 3 listed above, capped at \$511.00 per day or \$5,110.00 in aggregate and at 2/3<sup>rds</sup> the employee's regular rate of pay for reasons 4,5, and 6 listed above, capped at \$200.00 per day or \$2,000.00 in the aggregate.

An employee may choose to use his or her accrued leave and therefore not be subject to the statutory cap.

## **2. What are the effective dates for the FFCRA?**

The FFCRA became effective April 1, 2020 and expires on December 31, 2020.

## **3. Are all state employees eligible for the FFCRA?**

This depends. The FFCRA allows an employer to exclude certain employees who are in job classifications considered as a "health care provider" or "emergency responder." For the State of Tennessee, an agency may exclude employees in these classifications from a portion or all of the leave provided for in the FFCRA, to the extent necessary to ensure the continued operation of mission-critical services in a matter that protects the health, safety, and welfare of the public and the employees of the agency.

## **4. Which positions/classifications are considered a "health care provider" who may be subject to exclusion under the FFCRA?**

According to the FFCRA, a *health care provider* is defined as anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, Employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of these institutions described above to provide services or to maintain the operation of the facility where that individual's services support the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.

To minimize the spread of the virus associated with COVID-19, agencies are encouraged

to be judicious when using this definition to exempt health care providers from the provisions of the FFRCA.

**5. Which positions/classifications are considered an “emergency responder” who may be subject to exclusion under the FFRCA?**

An emergency responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

To minimize the spread of the virus associated with COVID-19, agencies are encouraged to be judicious when using this definition to exempt health care providers from the provisions of the FFRCA.

**6. If an employee is healthy, but is directed by a medical professional or their agency to stay home because he or she has been in direct contact with an individual exposed to COVID-19, and the employee is unable to work from home, is the employee eligible for FFRCA?**

If an employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19 or is advised by a healthcare provider to self-quarantine due to COVID-19 concerns, he or she may request up to two weeks of emergency paid sick leave at the employee's regular rate of pay, capped at \$511 per day or \$5,110 total.

Employees may elect to use accrued leave or compensatory time to cover the absence. Note the use of accrued leave or compensatory time will not count against an employee's FFCRA entitlement.

**7. If an employee is experiencing COVID-19 symptoms and is seeking medical diagnosis or tests positive for COVID-19, and the employee is unable to telework, in what pay/status is the employee placed?**

If an employee is experiencing COVID-19 symptoms and is seeking medical diagnosis he or she may request up two weeks of emergency paid sick leave at the employee's regular rate of pay capped at \$511 per day or \$5,110 total.

Employees may elect to use accrued leave or compensatory time to cover the absence. Note the use of accrued leave or compensatory time will not count against an employee's

FFCRA entitlement.

**8. If an employee must stay home to care for a son or daughter whose school was closed due to COVID-19, will the employee be eligible for FFRCA?**

If an employee cannot come to work or work from home because he or she is caring for the employee's child whose school or place of care is closed or the child's care provider is unavailable due to public health emergency, he or she will may request up to two weeks of paid sick leave at 2/3<sup>rd</sup>s the employee's regular rate of pay, capped at \$200 per day or \$2,000 total. Employees may elect to use accrued leave or compensatory time to cover the absence. Note the use of accrued leave or compensatory time will not count against an employee's FFCRA entitlement.

Eligible employees (those employed for thirty calendar days or more) may also request to receive expanded family and medical leave for up to 12 work weeks. The employee will receive 2/3rds the employee's regular rate of pay, capped at \$200 per day or \$10,000.00 in the aggregate for the period after the first 10 days that expanded family and medical leave is taken. Employees may elect to use accrued leave or compensatory time to cover absences.

Certain employees who are in job classifications considered as a "health care provider" or "emergency responder" may be exempt from the provisions of the FFRCA by an agency to the extent necessary to ensure the continued operation of mission-critical services.

**9. Who is a son or daughter under the FFRCA?**

Under the FFCRA, a "son or daughter" is an employee's own child, which includes a biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom the employee is standing in loco parentis—someone with day-to-day responsibilities to care for or financially support a child. For additional information about in loco parentis, see [Fact Sheet #28B: Family and Medical Leave Act \(FMLA\) leave for birth, placement, bonding or to care for a child with a serious health condition on the basis of an "in loco parentis" relationship](#).

In addition, a "son or daughter" is also an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability. For additional information on requirements relating to an adult son or daughter, see [Fact Sheet #28K](#).

**10. If an employee must stay home to care for an individual who is subject to quarantine, or isolation and the employee is unable to work from home, are they eligible for the FFRCA?**

An employee who is caring for an individual subject to a federal, state, or local

quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns may request up to two weeks of paid sick leave at 2/3<sup>rd</sup> the employee's regular rate of pay, capped at \$200 per day or \$2,000 total. Employees may elect to use accrued leave or compensatory time to cover absences.

An eligible individual being cared for must have a personal relationship with the employee and there must be a genuine need to care for the individual. The DOL has explained that a "personal relationship" means the relationship creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined. For example, an immediate family member or a roommate are individuals with whom such an expectation is present in the relationship. The definition of family members is provided in the State of Tennessee Attendance and Leave Manual under the section titled, *Family and Medical Leave Act*.

Note the use of accrued leave or compensatory time will not count against an employee's FFCRA entitlement.

**11. Will emergency paid sick leave count against an employee's accrued leave?**

No, the FFCRA provides a new leave requirement in addition to leave already provided by the state effective April 1, 2020. However, an employee may elect to use accrued leave or compensatory time to cover absences, in lieu of the emergency paid sick leave allotment.

**12. May an employee supplement FFCRA leave with accrued leave or compensatory time if the request is for a qualifying reason under which the employee is owed 2/3<sup>rd</sup> of his or her regular rate of pay in order to receive the additional 1/3<sup>rd</sup> of pay?**

No. Employees must elect whether they are going to use FFCRA leave or eligible accrued and/or compensatory time to cover the absence.

**13. Can leave be used intermittently under the expanded Family and Medical Leave Act?**

Yes, so long as there is an agreement between the agency and the employee. Employees may take intermittent leave in any increment that is agreed upon by the agency and the employee. State agencies are encouraged to be flexible and work with employees on arrangements that maximize productivity while also allowing employees to care for children whose school or place of care is closed, or childcare provider is unavailable.

**14. Can an employee take leave under the emergency paid sick provision intermittently?**

It depends on what qualifying reason the employee is taking emergency paid sick leave. If the employee is taking emergency paid sick leave for any of the following reasons and

is unable to work from home, then the leave cannot be taken intermittently:

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

Once an employee begins taking emergency paid sick leave for one or more of the qualifying reasons listed above because he or she cannot work from home, the employee must continue to take the emergency paid sick leave until he or she either (1) uses the full amount of emergency paid sick leave or (2) no longer has a qualifying reason for taking the emergency paid sick leave. If the employee does not exhaust his or her emergency paid sick leave, he or she can take any remaining emergency paid sick leave at a later time for a qualifying reason which arises until December 31, 2020.

If the employee is permitted to work from home, then the agency and employee can agree that the employee may take emergency paid sick leave intermittently for any qualifying reason for periods that the employee is unable to work from home because of the COVID-19 related reason.

If the employee is taking the leave to care for a child whose school or place of care is closed, or whose childcare provider is unavailable, because of COVID-19 related reasons then, yes, emergency paid sick leave may be taken intermittently so long as there is an agreement to do so between the agency and the employee. The emergency paid sick leave may be used to cover time not working from home or working on an agreed-upon intermittent basis.

**15. If an employee has already exhausted his or her FMLA leave for the calendar year, can they still take leave under the expanded family and medical leave to care for a son or daughter?**

No. FFCRA provides an additional qualifying reason for leave under the FMLA. It does not expand the total amount of time an employee may take under the FMLA.

For example, if an employee took 12 weeks of family and medical leave from November 1, 2019 through Friday, January 24, 2020 to care for a newborn child then the employee has exhausted his or her Family and Medical Leave entitlement in the rolling 12-month period and is not eligible to take emergency family and medical leave under the FFCRA on April 1, 2020.

Note: an employee's previous use of conventional family and medical leave does not impact the employee's eligibility for emergency paid sick leave, which is a new paid leave

entitlement in addition to family and medical leave.

**16. What documentation is an employee required to provide to seek leave under the expanded Family and Medical Leave Act?**

Pursuant to the FFRCA, the documentation includes a signed statement containing the following:

- The employee's name;
- The date(s) for which leave is requested;
- The qualifying need for leave, including the (1) name of the child being cared for, (2) the name of the school, place of care, or child care provider that is closed or became unavailable due to COVID-19, and (3) a statement representing that no other suitable person is available to care for the child during the period of requested leave; and
- A statement representing the employee is unable to work or work from home because of the qualifying need.

Per [DOL Factsheet #28G](#), an employer must notify the employee each time a certification is required and may request certification at a later date if it questions the appropriateness of the leave or its duration.

A [form](#) will be available for employees to request leave under this provision of the FFRCA.

**17. What documentation is an employee required to provide when seeking to take emergency paid sick leave:**

Pursuant to the FFRCA, the documentation includes a signed statement containing the following:

- The employee's name;
- The date(s) for which leave is requested;
- The COVID-19 related qualifying reason for leave; and,
- A statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason.

Additional documentation may be required depending on the qualifying need:

- An employee requesting leave due to a quarantine or isolation order to which the employee is subject must provide the name of the government entity that issued the order.
- An employee requesting leave because he or she has been advised by a healthcare provider to self-quarantine must provide the name of the health care provider.
- An employee requesting leave to care for an individual subject to a quarantine or

isolation order or who has been advised by a healthcare provider to self-quarantine must provide either the name of the government entity that issued the order to which the individual is subject or the name of the health care provider who advised the individual to self-quarantine, depending on the reason for the request.

- An employee requesting leave to care for his or her child whose school or place of care is closed, or childcare provider is unavailable must provide: (1) the name of the child; (2) the name of the school, place of care, or child care provider that is closed or become unavailable; and (3) a statement representing that no other suitable person is available to care for a child during the period of requested leave.

**18. Are the emergency paid sick leave and emergency family and medical leave requirements retroactive?**

No, the emergency paid sick leave and expanded family and medical leave requirements are not retroactive prior to April 1, 2020.

**19. What does it mean to be unable to work, including telework?**

An employee is unable to work if the employee cannot perform his or her work, because one of the qualifying reasons set forth in the FFCRA, at the normal worksite, from home or elsewhere.

**20. What job restoration rights are available to employees who take leave under the expanded Family and Medical Leave Act?**

Generally, the FFCRA and the Family and Medical Leave Act (which must be read in conjunction) require employers to provide the same or a nearly equivalent job to an employee who returns to work after taking family and medical leave. However, there is no additional protection from employment actions such as a reduction in force that would have affected the employee regardless of whether he or she took leave. Such an employee may be subject to a reduction in force so long as the employer can show that the employee would have been subject to the RIF even if he or she had not taken leave under the expanded Family and Medical Leave Act.

**21. Who does an employee need to contact for additional questions or concerns?**

An employee can contact their agency's human resources office for additional questions on the FFCRA. Additional information on the FFCRA may also be found on the DOL's website. [Click here](#) for more information.