



Families First Coronavirus Response Act/H.R. 6201

Please Note: The federal Families First Coronavirus Response Act (FFCRA) and corresponding Division of Personnel (DOP) policy are set to expire December 31, 2020. Any reference to the Act or policy in the material below will not be applicable to events occurring on or after January 1, 2021. However, employees may still be entitled to leave under the federal Family and Medical Leave Act, West Virginia Parental Leave Act, and/or the DOP *Administrative Rule* (143CSR1).

Signed into law March 18, 2020, the *Families First Coronavirus Response Act* requires public agencies, (federal/state governments, political subdivisions, schools) of any size and private employers with fewer than 500 employees to provide job-protected leave for qualifying needs related to a public health emergency under the *Family and Medical Leave Act* and paid sick leave under the *Emergency Paid Sick Leave Act* to eligible employees affected by the COVID-19 pandemic. Provisions of the Act, *Emergency Family and Medical Leave Act* and *Emergency Paid Sick Leave Act*, go into effect April 1, 2020, through December 31, 2020.

Emergency Family and Medical Leave Expansion Act

Effective Date: April 1, 2020, through December 31, 2020

Covered Employer: Public agencies (federal/state governments, political subdivisions, schools) of any size and private employers with fewer than 500 employees.

Eligible Employee: Any full-time or part-time employee that has been on the employer's payroll for **30 calendar days**. The Act permits employers to exclude health care providers and emergency responders from this emergency FMLA entitlement.

Emergency FMLA Entitlement:

Eligible employees are entitled to take up to twelve (12) weeks of Emergency FMLA leave for "a qualifying need related to a public health emergency."

Eligibility is limited to circumstances where an employee is unable to work (or telework) to care for a minor child if the child's school or place of child care has been closed or is unavailable due to a public health emergency.

Eligible employees shall be granted unpaid leave or may take available accrued sick or annual leave during the first ten (10) days of leave.

The remaining ten (10) weeks are paid at not less than 2/3 of the employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work. The maximum payment is \$200 a day and a \$10,000 total. For employees with variable hours each week, paid leave would be equal to the average number of hours worked per day over the previous six months. An eligible employee is entitled



to twelve (12) weeks of Emergency FMLA leave. Emergency FMLA leave is job-protected, and the employer would restore an employee to the same or equivalent position upon their return to work.

Emergency Paid Sick Leave Act

Effective Date: April 1, 2020, through December 31, 2020

Covered Employer: Public agencies (federal/state governments, political subdivisions, schools) of any size and private employers with fewer than 500 employees.

Eligible Employee: Any full-time or part-time employee is immediately eligible for paid sick leave. Unlike the emergency FMLA requirements, there is no 30-calendar day employment requirement. The Act permits employers to exclude health care providers and emergency responders from this emergency entitlement.

Emergency Paid Sick Leave Entitlement:

Full-time employees who are unable to work or telework are eligible for up to eighty (80) hours of paid sick leave at their regular rate of pay because:

The employee is subject to 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 because of COVID-19

The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis

Full-time employees who are unable to work or telework are eligible for up to eighty (80) hours of paid sick leave at two-thirds (2/3) of the employee's regular rate or minimum wage, whichever is greater when caring for an immediate family member because:

The employee is caring for an individual subject or advised to quarantine or isolation

The employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions

The employee is experiencing substantially similar conditions as specified by the Secretary of Department of Health and Human Services.

Part-time employees: Part-time employees are eligible to take the number of hours they would normally work during a two-week period.

**The law limits paid leave to \$511 per day (\$5,110 in total) where leave is taken for an employee's own illness or quarantine; and \$200 per day (\$2,000 in total) where leave is taken for reasons to care for others or school closures.



Required Documentation: Employees are required to prove documentation of need to be eligible to take emergency paid sick leave and/ or emergency FMLA. In addition to the form DOP-L4A, Application for Leave Under the Federal Families First Coronavirus Response Act/Emergency Family and Medical Leave and Emergency Paid Sick Leave an employee requesting leave must provide the following documentation.

For emergency paid sick leave and emergency FMLA for the employee:

- Name;
- Date of leave;
- A statement of the COVID-19 related reason they are requesting leave and written support for such reason; and
- A statement that the employee is unable to work or telework.

For emergency paid sick leave and emergency FMLA due to quarantine:

- The name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and,
- If the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

For emergency paid sick leave and emergency FMLA for quarantine because of school or child-care closure:

- The name and age of the child (or children);
- The name of the school that has closed or place of care that is unavailable, and
- A representation that no other suitable person is available to provide care for the child; and
- If the need to provide care is for a child older than fourteen, a statement that special circumstances exist requiring the employee to provide the care.
- For example, the documentation may exist in the form of a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to the employee from an employee or official of the school, place of care, or child care provider.

Employers should also note that they cannot:

- Require an employee to use other paid leave before using the paid sick time provided in the new legislation.
- Require an employee to find a replacement to cover his or her scheduled work hours.
- Retaliate against any employee who takes leave in accordance with the Act.
- Retaliate against an employee who files a complaint or participates in a proceeding related to the Act—including a proceeding that seeks to enforce the Act.



In accordance with the Families First Coronavirus Response Act, each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, of the requirements described in this Act. In addition to the premises of the employer, this poster should be made available electronically to employees in order to satisfy the requirement for those not on the employer's premises. The poster may be found on the Department of Labor website at: https://www.dol.gov/FCRA_Poster_WH1422_Non-Federal.pdf