

# FFCRA: FAMILIES FIRST CORONAVIRUS RESPONSE ACT WEBINAR FAQs

## **Who are the “health care providers” that can be excluded from paid sick leave and/or expanded family and medical leave?**

*Please note: Due to additional guidance recently released by the Department of Labor, this answer has been updated from information given in the webinars last week.*

According to the Department of Labor, "health care provider" as it relates to FFCRA includes "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 the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility."

## **Can a furloughed employee receive paid sick leave or expanded family and medical leave?**

No. If an employee is furloughed because an employer does not have enough work or business, the employee is not entitled to then take paid sick leave or expanded family and medical leave. Also, the act is not retroactive so any employees furloughed prior are not eligible. However, the employee may be eligible for unemployment insurance benefits.

## **Are employers required to distribute the FFCRA poster to employees? How should it be distributed to remote employees?**

Yes. You can post it in a public place if your office is open. If most of your employees are working remotely, you can email the poster to your employees or "post" it on an internal work website that your employees can access.

## **Would both the Hawaii stay at home directive and required 14-day quarantine after travel qualify as a quarantine subject to FFCRA?**

The stay at home order is *not* a quarantine that would qualify an employee for leave under FFCRA. The 14-day quarantine for residents returning to Hawaii, however, *does* qualify an employee for leave under FFCRA.

## **Will there be any benefits available for employees who work at companies with more than 500 employees?**

Currently, the FFCRA will not apply to companies over 500 and the tax credit is not available. Employees of the companies over 500 could use any sick, vacation, paid time off, or leave policies that their employer provides.

## **If an employer wants to pay employees more than they are entitled to, can they do so and claim a tax credit for the entire amount paid to employees?**

You may pay your employees in excess of FFCRA requirements. But you cannot claim, and will not receive tax credit for, those amounts in excess of the FFCRA's statutory limits.

### **Does child care leave apply to foster or haikai children who aren't legally adopted? What ages are included?**

Under FFCRA, an employee's own child under 18 years of age, including a biological, adopted, foster child, stepchild, legal ward, or a child for who they maintain day-to-day responsibilities to care for or financially support would qualify the employee to take child care leave. Additionally, any adult son or daughter who has a mental or physical disability and is incapable of self-care because of that disability would qualify the employee to take child care leave.

### **How do we request employees to demonstrate they need to care for their child?**

You may ask an employee to attest that they have children and that those children are not able to go to school due to a COVID-19 related closure.

### **How does the child care leave apply to situations when there are multiple adults in the home who could also look after the child?**

Employees should only apply for the leave if they are in need of it, but the employer should not get involved in validating the care structure in the home. If there is evidence that the child is not able to go to school, daycare, etc., then the leave should be approved.

### **Can an employee use both child care leave and paid sick leave to care for a child if both types of leave apply?**

Yes, the employee may be eligible for both types of leave, but only for a total of twelve weeks. The employee may take paid sick leave for the first ten days of that leave period, and take child care leave for the remaining ten weeks.

### **Can regularly full-time employees use leave to take partial days off to provide child care?**

Yes, if the employee qualifies and both employer and employee agree on an arrangement.

### **How do we verify and document the requirements for paid sick leave?**

We are still without DOL guidance. We suggest that the leave is granted and then any physician documentation be collected after the fact to be given to the employer when they are applying for the tax credit.

### **What factors determine if an employee is unable to telework?**

If an employer permits an employee to telework, but the employee is unable to perform those tasks for the same reasons that they would qualify for either paid sick leave or child care leave, then the employee would be entitled to take corresponding leave.

### **If an employee has already taken leave under FMLA this year, are they still eligible to take leave under FFCRA? Similarly, if an employee takes leave under FFCRA, are they still eligible to take leave under FMLA later this year?**

Yes, however employees may only take a total of 12 workweeks of leave during a 12-month period under the FMLA, including the Emergency Family and Medical Leave Expansion Act. Additionally, leave under FFCRA is not available after December 31, 2020.

### **Are part-time or on-call employees eligible for leave under the FFCRA?**

Yes. Employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking Emergency FMLA. Employees who have worked for less than six months prior to leave are entitled to the employee's reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.

### **If an employee has reduced hours because less work is available, and they qualify for leave under FFCRA, can they collect part-time unemployment insurance benefits as well as paid FFCRA leave for the hours they would have worked?**

Technically, yes, but Partial Employment benefits will be reduced by FFCRA payments, assuming the FFCRA payments equal more than \$150 per week. We don't anticipate FFCRA recipients to receive partial unemployment benefits.

### **How do we ensure that employees requesting these benefits receive their pay? How do we communicate this to PSH?**

PSH is building a process with a form to complete so we can apply the appropriate leave. We are pending some final DOL guidance before we release this process to clients.