

COVID-19: Families First Coronavirus Relief Act

The federal government recently passed the Families First Coronavirus Relief Act (FFCRA). This new legislation expands protected leave, requires paid sick leave from qualified employers, and has implemented other requirements for employers due to coronavirus/COVID-19. This is in addition to Governor Newsom's Stay-at-Home Executive Order N-33-20.

Previously, an employer's ability to inquire as to an employee's medical condition was limited. While there are still limits, the FFCRA allows the following specifically for COVID-19 related inquiries:

- You can ask employees if they are experiencing COVID-19 symptom
- You can take employees' temperatures for the limited purpose of evaluating the risk to others as a result of the COVID-19 pandemic (do so with appropriate health and safety precautions regarding reuse of the thermometer)
- You may require employees to wear personal protective equipment
- You may send employees home if they become ill with symptoms of COVID-19
- You cannot identify employees who test positive for or are suspected of having contracted COVID-19 by name. Notification to employees must not reveal personal health-related information of others

Additional information can be found at: https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ_ENG.pdf

The FFCRA is effective April 1, 2020, through December 31, 2020. The Department of Labor will require employers, effective April 1, 2020, to post a notice regarding employee rights under the FFCRA. A sample notice you can print and post is available at: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

The FFCRA introduces the following paid leave requirements:

- Emergency paid sick leave for 6 circumstances related to the COVID-19 pandemic
- Emergency FMLA expansion paid leave related to childcare needs created by COVID-19 pandemic
- Paid leave provided specifically under the FFCRA does not carry over to 2021 and is not paid out at separation

Private employers with fewer than 500 employees are covered under the FFCRA.

The Emergency Paid Sick Leave Act requires employers to provide 10 days/80 hours of paid leave for full time employees or the equivalent of the normal/average hours over 2 weeks for part time employees for the following reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.

2. The employee has been advised by a healthcare provider to self- quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
5. The employee is caring for their son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of the son or daughter is unavailable, due to COVID-19 precautions.
6. The employee is 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.

For categories 1-3, paid sick leave is paid at the employee's regular rate subject to daily and total caps. For categories 4-6, paid sick leave is paid at 2/3 of the employee's regular rate and subject to caps. It is important to note FFCRA paid sick leave is in addition to employer-provided sick leave. This means you are required to provide 10 days/80 hours of sick leave to full time employees and the normal/average hours over 2 weeks for part time employees in addition to the 40 hours (or part time equivalent) of paid sick leave already mandated by the City of San Diego. Additionally, FFCRA paid leave must be used before an employee is required to use previously-accrued sick leave.

The FFCRA has also expanded Family Medical Leave Act (FMLA) protections. Employees who are unable to work (including remotely) to care for a child under 18 whose school/childcare is closed due to COVID-19 are eligible for 12 weeks of FMLA leave. This applies to all employers, regardless of size, if the reason for leave is because of childcare issues due to COVID-19. The first 2 weeks of leave are unpaid (employee can elect to use accrued PTO and the emergency paid sick leave) and the remaining 10 weeks are paid at 2/3 of the employee's regular rate, up to a cap. Employees must be returned to the same or equivalent position, pursuant to certain exceptions for employers with less than 25 employees.

Businesses with fewer than 50 employees can apply for exemption through the federal Department of Labor if the provisions set forth above would jeopardize the viability of the business as a going concern.

Additionally, employers will receive a payroll tax credit for the qualified sick leave wages paid in the next quarterly payroll tax payment, subject to the designated caps.

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