

Families First Coronavirus Response Act: Part I

This Technical Update is intended for general informational purposes only, and readers should consult with their entity's own counsel for specific legal questions.

In response to the COVID-19 pandemic, Congress passed the Families First Coronavirus Response Act (FFCRA) on March 18, 2020. The Act requires local and state governments and employers with less than 500 employees to provide employees with emergency paid sick leave and emergency family and medical leave in addition to what they currently offer employees. The FFCRA goes into effect April 1.

The FFCRA is a complex piece of legislation and cannot be wholly addressed in this Update; however, some key points are provided below:

Stay-at-home order and FFCRA leave. FFCRA allows an employee to take paid emergency sick leave if they are unable to work or telework due to “a Federal, State, or local quarantine or isolation order related to COVID-19.” FFCRA does not define “quarantine” or “isolation order,” but the CDC’s definitions of those terms indicate they apply when someone is sick with COVID-19 or has been exposed to COVID-19. The DOL’s guidance suggests that FFCRA’s sick leave provisions do not apply where an employee is unable to work or telework only because of a State or local stay-at-home order (i.e., is not sick, has not been exposed to COVID-19, or is not caring for a child due to a daycare/school closure).

Definition of “emergency responder.” Under FFCRA, an employer can exclude emergency responders from receiving emergency paid leave and extended family leave.

The guidance defines emergency responders as “an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients or whose services are otherwise needed to limit the spread of COVID-19.”

Emergency responders include but are not limited to:

- Law enforcement officers and correctional institution personnel
- Firefighters
- Emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics,

emergency management personnel, 911 operators

- Public works personnel
- 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.

The guidance asks employees to be judicious when using the definition to exempt employees from the provisions of FFCRA

Supplementing FFCRA leave with other available leave. An employer may (but is not required) to allow employees to use existing paid vacation, sick or medical leave to supplement FFCRA leave. Therefore, an employee who is receiving 2/3rds their rate of pay under FFCRA could use accrued leave to get the additional 1/3 of their normal pay.

Documentation you should be keeping. The guidance recommends that private-sector employers retain proper documentation in their records of employees taking leave under the FFCRA to claim the payroll tax credit. While the tax credit is not currently available for local governments, recording the names of employees taking leave, the amount of leave taken, and any documentation provided to support the leave is encouraged.

What this Means for Counties

Counties should comply with the FFCRA and work with their employees to provide emergency leave as needed. The Department of Labor has provided guidance on the FFCRA at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>. For more information, contact CTSI at (303) 861 0507. 

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