



FREQUENTLY ASKED QUESTIONS

Families First Coronavirus Response Act(FFCRA)

Updated 03/31/2020

Overview

What are the main provisions of this legislation?

The FFCRA (the Act), in part, expands emergency paid leave benefits by requiring certain employers to provide paid sick leave to covered employees. The FFCRA does two key things with regard to paid leave. First, it provides 2 weeks of paid sick leave to employees impacted by COVID-19 in several specific situations. Second, it amends the Family Medical Leave Act (FMLA) to provide employees with up to 12 weeks of job-protected leave in certain COVID-19 related circumstances with 10 weeks of that leave paid. The Act also establishes tax credits to help eligible employers pay for these benefits.

How does this affect my credit union?

The FFCRA applies to credit unions with less than 500 employees. There is limited authority for the Department of Labor (DoL) to provide exemptive relief to smaller credit unions. The Act creates dollar-for-dollar payroll tax credits to help many employers offset the costs of this paid leave.

When is this this law in effect?

These provisions are effective from April 1, 2020 through December 31, 2020.

Why does this law not apply to employers with 500 or more employees?

Lawmakers took the position that larger employers already had generous leave in place. Specifically, Congress found that nearly 90% of businesses with more than 500 employees offer paid sick leave to their full-time workers. The Act aims to facilitate more universal coverage of paid sick leave by providing temporary federal coverage for paid sick and family leave to all employers with fewer than 500 employees.

Mandatory Employer Paid Sick and Family and Medical Leave

Which employees qualify for the two weeks of paid sick leave?

The FFCRA sets forth six scenarios where an employee would be entitled to 2 weeks of paid leave if they are impacted by COVID-19:

1. The employee is subject to a federal, state or local quarantine or isolation order;
2. The employee was advised by a health care provider to self-quarantine;
3. The employee is experiencing symptoms of COVID-19 and is seeking a diagnosis;
4. The employee is caring for someone who is either subject to a government quarantine/isolation order or someone who was advised by a health care provider to self-quarantine;
5. The employee is caring for a child if the child's school has been closed or their child care is unavailable; or
6. The employee is experiencing a "substantially similar condition" as specified by Health and Human Services in consultation with Treasury and the DoL.

For this sixth category, to date there is not guidance indicating what kinds of situations might be "substantially similar" but this seems designed to give regulators some flexibility as the COVID-19 situation evolves.

How much leave are employees entitled to receive?

This depends on the reason the employee is taking leave. If the employee is taking leave for reasons one through three above, the employee is entitled to their full pay, up to \$511 per day, \$5,110 in the aggregate. If the employee is taking leave for reasons four through six above, the employee is entitled to their full pay, up to \$200 per day, \$2,000 in the aggregate.

Full time employees are entitled to 80 hours of leave, while part-time employees are entitled to are entitled to pay for the number of hours typically worked in a two-week period. This [DoL guidance](#) has more details on how to make calculations for the amount of leave that must be paid to an employee, including a discussion of the consideration of overtime pay.

Who qualifies for expanded family medical leave?

The FFCRA also expands FMLA temporarily to provide up to 12 weeks of job-protected leave, 10 weeks of which is paid. To be eligible for paid leave, employees must have been on the credit union's payroll for 30 days. Eligible employees may use emergency FMLA leave to care for their child if the child's school or childcare provider has been closed or the childcare provider is unavailable due to the COVID-19.

The first 2 weeks of leave may be unpaid, but keep in mind that the FFCRA also allows 2 weeks paid sick leave for this same situation. Alternatively, the employee may choose to substitute accrued paid time off or other medical or sick leave during the initial 2-week period, but an employer cannot require an employee to do so.

How much is an employee entitled to be paid under the expanded family medical leave?

For the longer, 10 week paid leave period, the employee is entitled to two-thirds of the employee's regular pay. The maximum amount is \$200 per day and \$10,000 in the aggregate. This [DoL guidance](#) has more details on how to make calculations for the amount of leave that must be paid to an employee.

What does it mean for leave to be job-protected?

As with traditional FMLA leave, this leave is job-protected and an employer must return the employee to the same or equivalent position upon their return to work. In recently released guidance, the DoL provided some clarification on question #43. If an employee is utilizing the leave under the Act, an employer is "prohibited from firing, disciplining or otherwise discriminating against" the employee. However, this does not protect employees "from employment actions, such as layoffs" that would have affected the employee regardless of whether they took leave.

Our credit union has under 50 employees. Does this law apply to us?

There are not broad exemptions in the law for smaller credit unions but there is some authority for the DoL to, by regulation, to provide limited exemptions. The Act allows the DoL to exempt small businesses with under 50 employees from the requirement to provide 2 weeks of paid leave in two of the six situations listed above: (1) the employee is taking leave to care for another person who is under a government quarantine order or self-quarantining on advice of their health care provider; or (2) the employee is taking leave to care for a child whose school or day care are

unavailable due to COVID-19. The DoL has the option to issue a small business exemption if it finds that these requirements “would jeopardize the viability of the business” and is considering this issue. In [recent guidance](#), the DoL, in question #58, set forth three conditions that must be met for a small business to claim this exemption. An authorized officer must determine that one of the following apply to claim the exemption:

1. Providing leave due to school or child care closures would result in the business’s expenses and financial obligations exceeding available business revenues and cause the business to no longer operate at a minimal capacity;
2. The absence of the employee(s) requesting the leave would be a “substantial risk to the financial health or operational capabilities” of the business because of the employee(s) specialized skills, knowledge of the business, or responsibilities; or
3. There are not sufficient workers who are able, willing, and qualified and who will be available when and where they are needed to perform the work provided by the employee(s) requesting the leave, and this work is needed for the business to operate at a minimal capacity.

The Act also allows DoL to exempt credit unions with under 25 employees from the requirement that the 12 weeks of family leave be job-protected. DoL could grant an exemption if certain conditions are met, including the position no longer existing due economic conditions or because of COVID-19 and the credit union making “reasonable” efforts to restore the employee to an equivalent position. [DoL guidance](#), in question #43, set forth four hardship conditions that must exist for a smaller employer to not return an employee to the same position:

1. The employee’s position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of leave;
2. The credit union made reasonable efforts to restore the employee to the same or equivalent position;
3. The credit union makes reasonable efforts to contact the employee if an equivalent position becomes available; and
4. The credit union continues to make reasonable efforts to contact the employee for one year from the earlier of the date the employee’s COVID-19 related leave ended or the date 12 weeks after the employee’s leave began.

Question #59 in the [DoL guidance](#) also has additional information on the applicability of the Act to smaller credit unions.

Tax Credits for Certain Employers

How is the tax credit computed?

The employer payroll tax credit is computed based on the amount of paid sick leave or family leave provided under the FFCRA. The credit is dollar for dollar up to the maximum amount of leave paid under the Act. For example, for the expanded family leave, the amount of leave is capped at \$200 per day and \$10,000 in the aggregate. The tax credit for this kind of leave is the same. Similarly, for paid sick leave that is capped at \$511 per day, up to \$5,110 per employee, eligible employers can receive up to those same amounts in payroll tax credits. The [IRS provided](#) the following examples:

If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.

If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.

The tax credits can be claimed for qualified leave paid from April 1, 2020 through December 31, 2020. For more information, see this [IRS bulletin](#).

How will the payroll tax credits help with our credit union's cash flow?

In a [press release](#), the IRS provided some details. Employers are required to withhold various federal taxes from employees' checks, including federal income taxes, Medicare taxes, and the employees' shares of Social Security taxes. Employers then have to deposit these funds along with the employer contributions for Social Security and Medicare taxes with the IRS and file quarterly payroll tax returns using [Form 941](#). The IRS indicated that eligible employers will be able to retain payroll taxes equal to the amount of qualifying sick and child care leave that they paid rather than depositing these funds with the IRS. If the payroll taxes are not enough to cover the cost of qualified leave paid, eligible employers will be able to file a request for an accelerated payment from the IRS, which expects to process such requests in 2 weeks or less.

Other Resources

Regulators are updating resources on the FFCRA and NAFCU expects additional guidance to be released in coming weeks. Here are key places to find additional guidance:

- Department of Labor [Resources](#)
- Internal Revenue Service [Resources](#)
- Department of the Treasury [Resources](#)
- NAFCU [Coronavirus Resources](#)