

**CDC+ CONSULTANT ADVISORY #2020-020**  
**[FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)]**

**ACTION REQUIRED**

**PLEASE READ: EMERGENCY PAID SICK LEAVE AND EFMLEA**

The Federal government has recently enacted the Families First Coronavirus Response Act (FFCRA), which may impact your employees. Attached is a poster that must be posted in a conspicuous place where employees or job applicants at a worksite can view it. This must be posted by April 18, 2020. Alternatively, employers can distribute the notice to employees by email or post the required notice electronically on an employee information website.

Below is a brief summary of some important aspects of the FFCRA. This information is provided for informational purposes only and is not a comprehensive examination of the law or its application to you. If you have any questions regarding the FFCRA and its applicability to your specific situation, please visit the following websites: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>; <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave> or contact the U.S. Department of Labor Wage and Hour Department directly at 1-866-4-USWAGE (1-866-487-9243) or via their website <https://webapps.dol.gov/contactwhd/Default.aspx>.

**Emergency Paid Sick Leave**

Certain provisions of the FFCRA provide eligible employees with an additional 80 hours of paid sick leave benefits. To be eligible for additional paid sick leave, the employee must be unable to work, which includes working from home, due to one of six listed reasons related to the COVID-19 public health emergency. (See attached poster). As such, the FFCRA would not apply to those employees who are able work within their own home. In addition, independent contractors are not generally considered “employees” under the FFCRA and are ineligible for paid leave under the FFCRA.

**Emergency Family And Medical Expansion Leave**

The FFCRA also provides for partially paid extended family medical leave for eligible employees who are unable to work due to their need to care for a son or daughter whose school or daycare is closed due to COVID-19. The initial 10 days of extended family medical leave is unpaid, and the remaining 10 weeks is paid at a rate of 2/3rds of the employee’s regular rate of pay. Again, this would not apply to workers who are able to work from home or individuals who are independent contractors.

**Exemptions**

The FFCRA provides an exemption for employees meeting the definition of “health care provider” or “emergency responder”. Employees meeting those definitions are not required to receive benefits under the FFCRA. In addition, employers with fewer than 50 employees may use a limited exemption and may deny leave to take care of a child out of school or daycare if it would jeopardize the viability of the employer’s business. The small business exception must be documented, and such documentation must be maintained in the employer’s records. The definitions of “health care provider” and “first responder” can be found at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (See Questions #56 and #57).



agency for persons with disabilities  
State of Florida



### Emergency Paid Sick Leave and Emergency FMLEA Employer Form

If you have approved a qualified employee for Emergency Paid Sick Leave or Emergency FMLEA, complete this form and email it to [apd.cdc.documents@apdcares.org](mailto:apd.cdc.documents@apdcares.org) or fax to: 888-329-2731, attn.: Tammy Ferrell

**Employer Information:**

|                            |       |
|----------------------------|-------|
| Employer (Consumer) Name:  |       |
| Consumer's CDC+ ID Number: | Date: |

**Employee Information:**

|   |  |
|---|--|
| Employee Name:                                  |  |
| Leave Start Date:                               | Leave End Date:  |
| Total Hours Approved Emergency Paid Sick Leave: | Total Hours Approved Emergency FMLA (for childcare need only): |

EMPLOYEE MEETS THE FOLLOWING CRITERIA FOR EMERGENCY LEAVE:

- Is subject to a federal, state, or local quarantine or isolation order related to COVID-19 that specifically prevents them from working.
- Has been advised by a health care provider to self-quarantine because of concerns related to COVID-19.
- Has symptoms of COVID-19 and is seeking (or has sought) a diagnosis.
- Is caring for another individual who is subject to quarantine or has been advised by a health care provider to self-quarantine due to COVID-19.
- Needs to care for child(ren) because their school or childcare provider is closed or unavailable because of COVID-19. Employee certifies that no other suitable person is available to care for the child(ren) during the period of requested leave. If the child is over 14, the employee further certifies that there are special circumstances that require employee's care for them.
- Is experiencing other conditions substantially similar to COVID-19 as specified by the Florida Department of Health.

For Employer:

- Approving this leave request will not jeopardize the viability of the business (care received).

**I certify that the employee has submitted the needed Emergency Leave Request form and the request is approved. No timesheets will be submitted for the employee during the time indicated. Emergency FMLEA will be paid at a rate of two-thirds the employee's regular rate of pay.**

**Consumer/Representative Signature/Date:** \_\_\_\_\_



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## Emergency Paid Sick Leave and Emergency FMLEA Request Form

**Employer Information:**

|                            |       |
|----------------------------|-------|
| Employer (Consumer) Name:  |       |
| Consumer's CDC+ ID Number: | Date: |

**Employee Information:**

|   |   |
|---|---|
| Employee Name:                                      |   |
| Requested Start Date:                               | Requested End Date:   |
| Total Hours of Emergency Paid Sick Leave Requested: | Total Hours of Emergency FMLEA Requested (for childcare need only): |

I CERTIFY THAT I AM UNABLE TO WORK FOR THE FOLLOWING REASON:

I am subject to a **federal, state, or local quarantine or isolation** order related to COVID-19 that specifically prevents me from working.  
Name of the government entity issuing the order: \_\_\_\_\_

I have been **advised by a health care provider to self-quarantine** because of concerns related to COVID-19.  
Name of the advising health care provider: \_\_\_\_\_

I have **symptoms of COVID-19**, and I am seeking (or have sought) a diagnosis.

I am **caring for another individual** who is subject to quarantine or has been advised by a health care provider to self-quarantine related to COVID-19.  
Name of person I am caring for and our relationship: \_\_\_\_\_

**AND**  
Name of the government entity issuing the order: \_\_\_\_\_

**OR**  
Name of the advising health care provider: \_\_\_\_\_

I **need to care for my child(ren)** because their school or childcare provider is closed or unavailable because of COVID-19. **I certify that no other suitable person is available to care for the child(ren) during the period of requested leave.** If listed child is over 14, I further certify that there are special circumstances that require me to provide care for them.  
Name(s) and age(s) of child(ren): \_\_\_\_\_

Name of closed school(s) or place(s) of care: \_\_\_\_\_

I am experiencing **other conditions substantially similar** to COVID-19 as specified by the Department of Health and Human Services.

**I certify that the above information is truthful and understand that misrepresenting my need for leave is grounds for discipline, up to and including termination. I recognize this request may be denied if it jeopardizes the viability of the business.**

**Employee Signature and Date:** \_\_\_\_\_

## Frequently Asked Questions about the Family First Coronavirus Response Act (FFCRA) and Consumer-Directed Care Plus (CDC+):

### 1. What is the Family First Coronavirus Response Act (FFCRA)?

- The FFCRA was enacted by the federal government in response to the COVID-19 pandemic. It provides emergency leave to employees who are complying with quarantine mandates or caring for children or sick loved ones. Full-time employees are eligible for up to 80 hours of paid emergency sick leave benefits (up to 10 days of regularly scheduled hours for part-time employees) and up to 10 weeks of emergency family and medical expansion leave, paid at 2/3 rate of usual pay.

### 2. Who is covered under FFCRA?

- Any Directly Hired Employees (DHE) who have been working for you for 30 days or more are eligible.
- Independent Contractors (IC) and Agency Vendors (AV) are not eligible.

### 3. What about my monthly budget? I can't afford to give my employees paid leave.

- The FFCRA payments will be paid from the employer/employee taxes and shouldn't affect your monthly budget.

### 4. I read over the information, and it says employers with fewer than 50 employees may use a limited exemption if it jeopardizes the viability of the employer's business. How does this relate to me?

- Your "business" is the care you receive. So, if your care (health and safety) would be in jeopardy and you have fewer than 50 Directly Hired Employees (DHE), then you may use the small business exemption to deny the leave request. This exemption only applies when an employee has requested leave to care for a child whose school or childcare facility is closed for COVID-19. Be sure to document both the request and the denial. You can use the Emergency Leave Request form and the Emergency Leave Determination form; both are available on the APD CDC+ website.

### 5. Are my employees considered "health care providers," which would allow me to deny requested leave?

- Possibly; the provided definition of "health care providers" covers home health care workers.
  - ◇ If your employee is coming into your home and providing you with direct care that you need for your health and safety, then they would be considered a health care provider.
  - ◇ If your employee is assisting you with accessing community activities – work, transportation, etc. – then they would *not* be considered a health care provider.

**6. Must I approve the leave request? If I do, there will be no one to care for me.**

- No. Refer to questions 4 and 5.

**7. I already asked my employees not to come to work until the pandemic is over. Do I now need to offer them leave time?**

- No. If you have closed your worksite (not allowing employees into your home), your employees are not eligible for emergency leave payment. They may file for unemployment during the time you are closed.

**8. My employee called and said they will no longer be coming to work. Do I now need to offer them leave time?**

- No. If your employee quit or temporarily resigned, then they are not currently your employee and do not qualify for this leave. They may file for unemployment.

**9. My employee was exposed to the coronavirus and has asked for paid leave. What do I do?**

- If your employee was exposed to the coronavirus, they should follow the self-quarantine guidelines and not come into work for 14 days. You will need to follow the Emergency Leave Determination guide to determine if your employee meets the emergency leave criteria.

**10. My employee has requested leave because they need to care for a loved one or their child is out of school and no alternate childcare is available to them. What do I do?**

- If your employee has submitted a request to use emergency leave, you may use the Emergency Leave Determination form to help you determine if this is a valid request. If it is a valid request to care for a child because school or childcare is closed for COVID-19 but approving the leave would put your business (your care) in jeopardy, you can deny the request.

**11. What records do I need to keep if my employee requests emergency paid sick leave or emergency family medical expanded leave?**

- Regardless of whether you grant or deny a request for paid emergency sick leave or emergency family medical expanded leave, you must document the following:
  - ◇ Name of employee requesting leave
  - ◇ Dates leave was requested to cover
  - ◇ Reason for leave
  - ◇ Statement from the employee regarding the reason they are unable to work
    - If your employee requests leave because they are subject to quarantine or isolation order or to care for an individual subject to such an order, you must also document the name of the government entity that issued the order.
    - If your employee requests leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, you should additionally document the name of the health care provider who gave advice.

- If your employee is requesting leave because of childcare issues, you must collect the name and age of the child(ren) and the name or place of care that is closed.
- Documentation must be kept in the Consumer Representative's file for four years from date of signature.

**12. It seems like a lot of information to gather and retain for the leave request. Are there any tools to help?**

- Yes! The Emergency Paid Leave Request form and either the Emergency Paid Leave Determination Guide or the Emergency Paid Leave Employer form will provide all the documentation you need.
  - ◊ The Emergency Paid Leave Request form is for your employee to complete and give to you. If this form is properly completed, it will contain all the information pertaining to the employee's request that you must retain.
  - ◊ The Emergency Paid Leave Determination Guide form will not only help you to determine if your employee is eligible for the emergency leave, it also serves as your documentation if you deny the request.
  - ◊ The Emergency Paid Leave Employer form will serve as your documentation of any request that you approve.

**13. Do I need to send anything to CDC+ State Office regarding leave requests, leave approvals, or leave denials?**

- Yes. If you have approved emergency leave, you must send a copy of the Emergency Leave Employer form to CDC+. This will tell us what type of leave has been approved and how much leave has been approved. We will need this information to ensure your employee is paid. If leave is denied, you do not need to send anything to CDC+; however, you will need to keep a copy of the request and the denial in your Consumer/Representative file for four years from the date of signature.

**14. Must I keep a copy of any documents pertaining to the emergency leave? If so, for how long?**

- Yes. You must retain a copy of the employee's request and a copy of your determination (approval or denial) in your Consumer/Representative's file for four years from the date of signature.

# EMPLOYEE RIGHTS

## PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

### ▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅔ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

### ▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days* prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

### ▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to **telework**, because the employee:

- |   |   |
|---|---|
| <ol style="list-style-type: none"><li>1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;</li><li>2. has been advised by a health care provider to self-quarantine related to COVID-19;</li><li>3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;</li><li>4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);</li></ol> | <ol style="list-style-type: none"><li>5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or</li><li>6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.</li></ol> |
|---|---|

### ▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

For additional information  
or to file a complaint:  
**1-866-487-9243**  
TTY: 1-877-889-5627  
[dol.gov/agencies/whd](https://dol.gov/agencies/whd)

