



HR CRISIS MANAGEMENT: COVID-19 UPDATES, SEEKING CLARITY IN MURKY TIMES



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INTRODUCTIONS



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NEW UPDATES IN LIGHT OF COVID-19

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New FFCRA Guidance: Adoption and Implementation

- **On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act (FFCRA)**
- **The FFCRA required the Department of Labor (DOL) to provide regulatory compliance exceptions on or before March 24, 2020**
- **The FFCRA directed the DOL to identify enforcement guidelines and sick leave calculations on or before March 31, 2020**
- **The FFCRA becomes effective on April 1, 2020**

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Department of Labor Guidelines
(March 20, 2020 Exceptions and
Clarification)

- **On March 20, 2020, the IRS, Department of the Treasury, and the DOL announced FFCRA exceptions and clarifications:**
 - **Employers with at least one employee, and less than 500 employees must provide paid leave in accordance with FFCRA**
 - **Small Employers with less than 50 employees may be exempt from sick leave requirement relating to school closing or childcare unavailability; *no other relief***
 - **There is a thirty-day “non-enforcement period” identified (clarified by later DOL Directive on March 26, 2020)**

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Department of Labor Guidelines
(March 24, 2020 Publication)

- **On March 24, 2020, the DOL announced FFCRA requirements for paid leave for all employees:**
 - **Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined and/or experiencing COVID-19 symptoms; or**
 - **Two weeks (up to 80 hours) of paid sick leave at 2/3 of the employee's regular rate of pay for care of a quarantined individual or care for a child (under 18 years of age) whose school or childcare provider is closed due to COVID-19; AND**
 - **For all employees employed more than 30 days, up to an *additional* 10 weeks of paid expanded family and medical leave at 2/3 of the employee's regular rate of pay where an employee is unable due to the need to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19**

How does an employee qualify for benefits?

- **An employee qualifies for paid sick leave if the employee is unable to work (or telework) because:**
 - 1. is subject to a quarantine or isolation order related to COVID-19;**
 - 2. has been advised to self-quarantine related to COVID-19;**
 - 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;**
 - 4. is caring for an individual subject to an order described in (1) or (2);**
 - 5. is caring for a child whose school or place of care is closed related to COVID-19; or**
 - 6. is experiencing any other substantially-similar condition, AND**
- **An employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed due to COVID-19.**

How to calculate benefits?

- For leave related to quarantine/isolation orders or symptoms (reasons 1-3), employees taking leave shall be paid at the higher of their regular rate or minimum wage, up to \$511 per day/\$5,110 in the aggregate (over a 2-week period).
- For leave related to caring for an individual subject to quarantine or is experiencing a substantially-similar condition, (reasons 4 or 6), employees taking leave shall be paid at the higher of 2/3 their regular rate or 2/3 the applicable minimum wage, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).
- For leave related to childcare caused by the closure of school/childcare centers, (reason 5), employees taking leave shall be paid at the higher of 2/3 their regular rate or 2/3 the applicable minimum wage, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

How to employers receive reimbursement?

- **The FCCRA, DOL, and IRS, have concluded that Employer will receive a “dollar-for-dollar reimbursement” through the business being able to retain and access funds that they would otherwise pay to the IRS in payroll taxes.**
- **If the payroll taxes retained are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form (to be released during three week of 3/29/2020).**

On March 26, 2020, the DOL and Wage and Hour Division (WHD) issued additional Guidelines, Required Posters, and FAQ for Employers and for Employees

- **WHD issued a Field Assistance Bulletin advising of a “temporary non-enforcement period applicable to the FFCRA”**
 - **“The Department will not bring enforcement against any public or private employer for violations of the Act occurring within 30 days of the enactment of the FFCRA, *i.e., March 18 through April 17, 2020*, provided that the employer has made “reasonable, good faith efforts to comply with the Act.”**
 - **Bulletin provides “qualifications” for “reasonably” and “in good faith” that appears to suggest potential liability for terminations leading up to April 1, 2020 effective date.**

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 ⅓ 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"> 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; 2. has been advised by a health care provider to self-quarantine related to COVID-19; 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis; 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none"> 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 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|--|--|

► 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



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Impact of COVID-19 On Kentucky's Unemployment Claims



2 Kentucky Unemployment Update

- **On**

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Senate's CARES Act Impact for Employers and Employees



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Senate CARES Act Implication

Key CARES Act provides a refundable tax credit for 2020:

- **\$1,200 to individual filers with income of \$75,000 or less (or \$112,500 or less for a head of household)**
- **\$2,400 to married couples filing jointly with adjusted gross incomes of \$150,000 or less**
- **Those that qualify under either of the above provisions also receive an additional \$500 refundable credit for each of their “qualifying children”.**
- **For incomes over the thresholds, the credit is reduced by 5% of the taxpayer’s adjusted gross income over the applicable threshold. This results in a complete phase out for taxpayers who in 2019 made more than \$99,000 (individuals), \$146,500 (heads of households), and \$198,000 (joint filers).**

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Senate CARES Act Implication for Employers

Key Phase 3 CARES Act provisions affecting Employees and Employers:

- The Act includes a number of different programs and interventions that provide or intend to provide financial relief to eligible employers and employees.
- Small business loans will be made available to eligible employers and self-employment individuals.
- The act provides enhanced unemployment insurance benefits to employees for total and partial unemployment and to employers for retaining certain employees.
- The act confirms the emergency FMLA and sick leave benefits available to employees and advanced tax credits employers can take in providing these benefits.
- The Federal government will make loans to certain distressed businesses and places limits on compensation paid to executives servicing businesses subject to these loans.
- Employers may make certain non-taxable “qualified disaster relief payment”
- The Act runs 880 pages, so we have included the applicable Title and Section numbers to help you navigate through the legislation.
- I.Small business loans will be made available to eligible employers and self-employment

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Senate CARES Act Implication for Employers

Key CARES Act provisions affecting Employees and Employers:

- **2.50% Employee Retention Credit for Employers Closed Due to Covid-19.** The CARES Act provides eligible employers with a refundable payroll tax credit equal to 50% of certain “qualified wages” (including certain health plan expenses) paid to its employees beginning March 13, 2020 through December 31, 2020 if the employer is engaged in an active trade or business in 2020 and the wages are paid (i) while operation of that trade or business is fully or partially suspended due to a governmental order related to COVID-19 or (ii) during the period beginning in the first quarter in which gross receipts for that trade or business are less than 50% of gross receipts for the same calendar quarter of 2019 and ending at the end of the first subsequent quarter in which gross receipts are more than 80% for the same calendar quarter of 2019. The employee retention credit is available for employers with more than 500 employees, but for employers with more than 100 employees, the credit is available only with respect to wages paid to an employee that is not providing services due to the circumstances described in (i) or (ii) above. The credit is capped at \$5,000 (50% of \$10,000 qualified wages) per employee for all calendar quarters. Section 501(c) tax-exempt organizations are eligible for the credit, but governmental entities and companies receiving small business interruption loans under the CARES Act are not.
- **3.Small Business Loan Forgiveness Does Not Give Rise To Cancellation of Indebtedness Income.** The CARES Act includes a loan forgiveness program for small businesses. Any cancellation of debt income under the program would be tax-free (i.e., excluded from income), and would not result in a loss of

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EMPLOYEE COMMUNICATION ESSENTIALS

Employees expect frequent, accurate, authoritative, and transparent information

- Let people know what steps you've taken thus far to protect them.
- Be transparent when you don't know the answer to a question.

Identity Internal Messengers

- Include the right players in your communications plan like front-line managers.
- Leaders should outline communication plans and make sure that managers know what to expect and understand and define their roles.

Check Your Tone

- Craft messages that are balanced- try not to be too optimistic, unrealistic, or fearful.
- Check in with people frequently and see how they're doing. Morale could be low, and you want to mitigate this as much as possible. Take the time to engage in frequent conversations and display empathy.
- Take the time to appreciate your employees and their commitment to your organization.

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QUESTIONS & ANSWERS



SUBJECT:

Temporary Non-Enforcement Period Applicable to the Families First Coronavirus Response Act (FFCRA)

This Field Assistance Bulletin provides guidance to WHD field staff regarding the temporary non-enforcement period applicable to the FFCRA.

Background

President Donald J. Trump signed the FFCRA on March 18, 2020. The FFCRA is designed to help both employees and their employers by providing, for private employers, paid sick and family leave that is dollar-for-dollar reimbursed through a refundable tax credit.^[1] To enable public and private employers who are covered by the Act to come into compliance with the new statute, WHD will observe a temporary period of non-enforcement of the FFCRA for the period of March 18 through April 17, 2020.

Enforcement Guidance

The Department will not bring enforcement actions against any public or private employer for violations of the Act occurring within 30 days of the enactment of the FFCRA, i.e. March 18 through April 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the Act. For purposes of this non-enforcement position, an employer who is found to have violated the FFCRA acts “reasonably” and “in good faith” when all of the following facts are present:

1. The employer remedies any violations, including by making all affected employees whole as soon as practicable. As explained in a Joint Statement by the Department, the Treasury Department and the Internal Revenue Service (IRS) issued on March 20, 2020, ^[2] this program is designed to ensure that all covered employers have access to sufficient resources to pay required sick leave and family leave wages.^[3]
2. The violations of the Act were not “willful” based on the criteria set forth in *McLaughlin v. Richland Shoe*, 486 U.S. 128, 133 (1988) (the employer “either knew or showed reckless disregard for the matter of whether its conduct was prohibited...”).
3. The Department receives a written commitment from the employer to comply with the Act in the future.

If the public or private employer either (i) violates the Act willfully, (ii) fails to provide a written commitment to future compliance with the Act, or (iii) fails to remedy the violation upon notification by Department, the employee seeking payment, or a representative of that employee, including by making all affected employees whole as soon as practicable, the Department reserves its right to exercise its enforcement authority.

After April 17, 2020, this limited stay of enforcement will be lifted, and the Department will fully enforce violations of the Act, as appropriate and consistent with the law.

A few highlights of the bill include:

- The bill waives the seven-day waiting period for people to get financial assistance.
- It also extends benefits to people who are self-employed.
- Unemployment insurance for business owners will not be impacted.
- People who were cut back to part-time work can apply for partial assistance.
- It extends Kentucky's tax deadline to July 15 and expands telehealth opportunities.

To File for Unemployment Insurance, Click File Claim

[FILE CLAIM](#)

Unemployment Insurance Claim On These Days

In order to serve you better, UI claims will be filed on a specific day of the week based on the first letter of your last name.

Sunday.....	A-D
Monday.....	E-H
Tuesday.....	I-L
Wednesday.....	M-P
Thursday.....	Q-U
Friday.....	V-Z
Friday.....	If You Missed Your Day

The state implemented a new schedule that requires claimants to file based on the first letter of their last name.

The schedule is:

- Sunday: A-D
- Monday: E-H
- Tuesday: I-L
- Wednesday: M-P
- Thursday: Q-U
- Friday: V-Z
- Friday: If you missed your day

To file a claim, an individual will need to provide:

- Their Social Security number
- Their complete mailing address
- The name, address and phone number for each of their employers over the past 18 months
- The exact date they began each job
- The last date they worked at each job

Families First Coronavirus Response Act: Employer Paid Leave Requirements

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.^[1] The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date through December 31, 2020.

Generally, the Act provides that covered employers must provide to **all employees**:^[2]

- *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay* where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

A covered employer must provide to **employees that it has employed for at least 30 days**:^[3]

- *Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay* where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Covered Employers: The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees.^[4] Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

Qualifying Reasons for Leave:

Qualifying Reasons for Leave:

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or **unable to telework**) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

Duration of Leave:

For reasons (1)-(4) and (6): A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

For reason (5): A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Calculation of Pay:^[5]

For leave reasons (1), (2), or (3): employees taking leave shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

For leave reasons (4) or (6): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

For leave reason (5): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).^[6]

Tax Credits: Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage. For more information, please see the Department of the Treasury's website.

Employer Notice: Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements.^[7]

Prohibitions: Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA.

Penalties and Enforcement: Employers in violation of the first two weeks' paid sick time or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act. 29 U.S.C. 216; 217. Employers in violation of the provisions providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or child care provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act. The Department will observe a temporary period of non-enforcement for the first 30 days after the Act takes effect, so long as the employer has acted reasonably and in good faith to comply with the Act. For purposes of this non-enforcement position, "good faith" exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.



HR CRISIS MANAGEMENT FOR CORONAVIRUS: ANSWERS TO TOUGH QUESTIONS!



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