

FFCRA Rollout

Drinking from a firehose...from at least six feet away.



Utah Department of
**HUMAN
RESOURCE**
Management

Families First Coronavirus Response Act (FFCRA) Information

The Law

[Text - H.R.6201 - 116th Congress \(2019-2020\): Families First Coronavirus Response Act](#)

State Guidance

COVID-19 Guidance for State Managers

[Leave Code Reference Chart](#)

[Leave Code Entry Instructions](#)

[Emergency Family and Medical Leave Expansion Act](#)

[\(EFMLEA\) SOP](#) (links within the SOP take you to the notification email boilerplate and the [log to track FFCRA leave](#))

[FFCRA Exemptions \(Health Care Providers and Emergency Responders\)](#)

Department of Labor Guidance

[General Information](#)

[FFCRA: Employee Paid Leave Rights](#)

[FFCRA: Employer Paid Leave Requirements](#)

[FFCRA: FAQ's](#)

[NEW - FFCRA REGULATIONS](#)

[FFCRA Employee Rights Poster](#)

Related Law Guidance

[COVID-19 and the Fair Labor Standards Act](#)

[COVID-19 and the Family and Medical Leave Act](#) - While this page talks a lot about the flu and was obviously written for SARS or H1N1, the principles still apply to current conditions. [EEOC Webinar regarding the interplay between current conditions and discrimination laws - 43 minute YouTube presentation](#)

Big Picture

“The intent of FFCRA is to provide such paid sick leave as necessary *to keep you from spreading the virus to others.*” - DOL Guidance

The only thing in all of this that we can't fix retroactively is exposure to the virus and medical conditions incident thereto. Thus, if at any point you are unsure what to do under the FFCRA, select the option that best serves the purpose of preventing the spread of the virus and we can work out the rest later.

Related Employment Laws - FLSA and FMLA

It may feel like regular employment laws have been set aside or temporarily suspended under these emergency circumstances. They have not!!

The DOL has published specific guidance related to the FLSA and FMLA under the current circumstances. These laws were originally designed to be adaptable to a variety of working conditions (including telework) and a variety of family and medical events that might warrant time off work.

Remember, the FLSA governs time working, not leave. Inversely, the FMLA covers leave, not working time. Your first question to decide which provisions apply should be, “Is the employee working?”

Related Employment Laws - Discrimination Laws

The EEOC has stated clearly that anti-discrimination laws are unchanged by current events, even if current conditions have created new opportunities for violations.

One example the EEOC gave in a web presentation just this week is that they are hearing reports of managers subjecting employees of certain national origins to extra COVID-19 related scrutiny in the workplace because of where they are from. This is illegal. However, subjecting the same employees to increased scrutiny because they recently traveled from a COVID-19 hot spot is permissible so long as all persons who recently traveled from such locations are treated similarly.

Please help management remember that discrimination is still illegal.

Related Employment Laws - ADA

The ADA still applies in full.

How's that when we're taking employees' temperatures at the door, asking if they've had a cough or a fever, sending people home when they aren't feeling well, and otherwise treating sick people differently than we normally would??

Direct threat.

Remember, a direct threat is "[a] significant risk of substantial harm to health or safety of self or others that cannot be eliminated or reduced by reasonable accommodation." The declaration of a pandemic puts us in direct threat territory as a general statement for COVID-19 related employment decisions.

Related Employment Laws - ADA

We still have to engage the interactive process. An accommodation that was appropriate prior to the declared emergency may no longer be effective and may need to be re-evaluated. Remember, employers only have to provide an effective accommodation, not the employee's preferred accommodation.

Confidentiality is still very important. The EEOC explained this week that if someone in the workplace tests positive for COVID-19 under circumstances where others who may have been exposed need to be notified, the employee's name **CANNOT** be shared by management but the notification to others should be made. Yes, some work units are so small that leaving the employee's name out does not offer any meaningful anonymity--but management should not disclose the name.

Families First Coronavirus Response Act (FFCRA)

The Basics

The portions of the FFCRA relating to leave an employee may request are organized into three sections:

1. Qualifying Reasons for Leave
2. Duration of Leave
3. Calculation of Pay

There are 36 different combinations of reason, duration and pay calculations possible--and that is just for full-time employees without taking into account the employee's option to substitute their own paid leave.

It is easy to get confused if you do not approach each case in a systematic way. First, understand the reason for the leave. Next, based on the reason, determine the duration of the leave. Finally, based on the reason, calculate the pay (or in our case, understand which leave code to use because finance will do the heavy lifting when it comes to the calculations).

Families First Coronavirus Response Act (FFCRA)

Reasons for Leave

Under the FFCRA, an employee qualifies for (but must still request) 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.

If an employee requests leave for any other reason, even if they have one of the six reasons but can still work/telework, the leave request is not covered by the FFCRA. The request should be processed under normal leave policies.

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Duration of Leave

For reasons (1)-(4) and (6): A full-time employee is eligible for 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 (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical 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.

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Calculation of Pay, Reasons 1-4 and 6

For leave reasons (1), (2), or (3): employees taking leave are entitled to pay *at their regular rate* (over a 2-week period). This leave should be coded as OD with the activity code CV80

For leave reasons (4) or (6): employees taking leave are entitled to pay *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). This leave should be coded as OD with the activity code CV19

- Unless an employee is teleworking, they must take this leave in full-day increments and may not take the time intermittently. - See [DOL FAQ #21](#)
- This leave is not FMLA or EFMLEA and cannot be counted against an employee's accrued leave balances
- All employees* are eligible for this paid leave regardless of career service, benefits, full/part-time status, or any other distinguishing employment feature

* - We will discuss Health Care Providers and Emergency Responders shortly.

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Calculation of Pay, Reason 5

For leave reason (5): employees taking leave are entitled to pay *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). This leave should be coded as OS with the activity code CV19

- This leave is what the Emergency Family and Medical Leave Expansion Act (EFMLEA) added to the existing FMLA. All leave taken for reason 5 must be coded as OS with CV19 (or a normal FMLA code*) because it counts against the 12 month per calendar year limit under the FMLA. And yes, that means that if an employee has already used 12 weeks in 2020, they are not qualified for EFMLEA leave
- All employees are eligible for the first two weeks of leave. However, employees are eligible for the additional 10 weeks only if they have been employed for 30 days - Use the hire date in HRIS
- This leave may be taken intermittently, just like normal FMLA. In fact, the Department of Labor “encourages employers and employees to collaborate to achieve maximum flexibility.”

Families First Coronavirus Response Act (FFCRA) Health Care Providers and Emergency Responders

The FFCRA provides that employers may exclude health care providers and emergency responders from both the time off and pay provisions of the FFCRA. [DOL FAQ's #56 and #57](#) offer rather broad definitions for health care provider and emergency responder while #38 contemplates a case-by-case analysis.

Thus, an agency should not categorically exclude employees preemptively. Rather, when an employee asks for time off, the employer may then inform the employee that they are excluded.

Remember, if the employee is requesting leave for reasons 1-3, requiring the employee to work would be inappropriate. Once the employer has granted leave for those reasons, the employee is entitled to FFCRA pay.

EFMLEA SOP

[Emergency Family and Medical Leave Expansion Act \(EFMLEA\) SOP](#)

Negative leave balances end April 1, 2020 - because this federal benefit (at least the first two weeks) are available to all employees

Time reporting - the instructions for coding leave with activity codes is linked above