

HR Resources for Families First Coronavirus Response Act (FFCRA)

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Families First Coronavirus Response Act (FFCRA)

The U.S. Senate approved the Families First Coronavirus Response Act in a 90-8 vote on March 18, and President Donald Trump signed it into law a few hours later. The bill, effective April 1, 2020, will provide free screening, paid leave and enhanced unemployment insurance benefits for people affected by COVID-19, the respiratory disease caused by the coronavirus. The Families First Coronavirus Response Act (H.R. 6201) will provide:

- Free coronavirus testing.
- Paid emergency leave (See [Legislative Resources](#)).
- Enhanced unemployment insurance (See [Unemployment Insurance](#)).
- Additional funding for nutritional programs.
- Protections for health care workers and employees responsible for cleaning at-risk places.
- Additional federal funds for Medicaid.

FFCRA Federal Poster

(Source: <https://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/Senate-to-Vote-Soon-on-Coronavirus-Paid-Leave-Mandate.aspx>.)

Legislative Resources

Paid Family Leave

- Requires 12 weeks of job-protected FMLA leave for employees to care for children if schools/ daycares closed because of a public health emergency and they are **unable to work or telework**.

Rate of Pay

- First 10 days are unpaid
 - Employees may use accrued paid personal or sick leave during the first 10 days, but employers may not require them to do so
- After 10 days, employees are paid at 2/3 of their regular rate
- Capped at \$200 per day and \$10,000 in the aggregate

Paid Sick Leave

- Requires employers to provide paid, sick time to the extent the employee is unable to work (or telework) due to a need for leave because:

- 1) Employee is under government-ordered quarantine or isolation
- 2) Employee's "Health Care Provider" advises self-quarantine (HCP is same as FMLA definition and includes nurse practitioners and others)
- 3) Employee is experiencing COVID-19 symptoms and seeking medical diagnosis
- 4) Employee is caring for an individual subject to quarantine order or self-quarantine HCP advice (1 or 2, above)
- 5) Employee is caring for own child if the school or place of care of the child has been closed or the child-care provider is unavailable
- 6) Employee is experiencing substantially similar conditions as specified by the Secretaries of Health and Human Services, Treasury, and Labor

Eligibility

All employees, regardless of length of employment:

Amount of Paid Sick Time

- Full-time Employees = 80 hours
- Part-time Employees = equal to the number of hours that such employee works, on average, over a 2-week period

Rates of Pay / Caps

- For reasons 1-3 (employee's condition)
 - The higher of the employee's regular rate or applicable minimum wage
 - Capped at \$511 per day and \$5,110 in the aggregate
- For reasons 4-6 (employee caring for another)
 - 2/3 of regular rate or applicable minimum wage
 - Capped at \$200 per day and \$2,000 in the aggregate

Leave Law Resources

- [Paid Leave Law](#)
- [Greenburg-Traurig Coronavirus employer resources](#)
- [Ogletree Deakins webinar slides 3.20.2020](#)
- [DOL Guidance](#)
- [DOL Fact Sheet for Employers](#)

Questions for Consideration (Adapted from Ogletree Deakins)

1. How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?
 - During a pandemic, ADA-covered employers **may ask such employees if they are experiencing symptoms of the pandemic virus**. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat.
Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

2. When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic?
 - Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, **employers may measure employees' body temperature**. However, employers should **be aware that some people with COVID-19 do not have a fever**.

3. Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?
 - Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.

4. When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?
 - Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees.
 - *As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.*

5. May an employee refuse to come to work due to a general fear of becoming infected with COVID-19?
 - No. But a specific safety hazard may be the basis for an 11(c) retaliation claim under OSHA law, or potentially an unfair labor practice charge if employees are engaged in protected concerted activity under the National Labor Relations Act.

6. May an employer require an employee who is not exhibiting COVID-19 symptoms but who has been in contact with an individual with COVID-19 or is in a potential incubation period (e.g., after returning from travel to an area of risk, as noted by the CDC) stay away from work?
 - Yes and see the paid leave provisions below.

Employers with Existing Leave Policies.

- This paid sick time is in addition to whatever sick leave is already offered by the employer (including state or local requirements).
 - Employers may not require an employee to use other paid leave provided by the employer before the employee uses the paid sick time under the Act
 - But nothing **prohibits employers** from changing their leave programs **after the bill is enacted**

Questions for Consideration

- May an employer advance any vacation time and/or paid time off to employees to cover COVID-19 absences?
 - Yes.
- May an employer set up a plan to excuse or otherwise not count absences related to COVID-19, whether for an actual illness or a quarantine period?
 - Yes.
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Exemptions

- Employers of employees who are health care providers or emergency responders may elect to exclude such employees from the paid leave (these terms aren't defined).
- DOL is empowered to exempt small businesses with less than 50 employees if complying would "jeopardize the viability of the business as a going concern." The DOL will have to provide regulatory guidance on this possible exemption.

Downsizing Resources

Layoff and Furlough Information (Sources: Shrm.org; Department of Labor)

Terminology

- **Layoff** – A layoff is a temporary separation from payroll. An employee is laid off because there is not enough work for him or her to perform. The employer, however,

believes that this condition will change and intends to recall the person when work again becomes available.

- Employees are typically able to collect unemployment benefits while on an unpaid layoff, and frequently an employer will allow employees to maintain benefit coverage for a defined period of time as an incentive to remain available for recall.
- **Furlough** – A furlough is an alternative to layoff. When an employer furloughs its employees, it requires them to work fewer hours or to take a certain amount of unpaid time off.
- **Reduction in Force** – (RIF) occurs when a position is eliminated without the intention of replacing it and involves a permanent cut in headcount.
 - A layoff may turn into a RIF or the employer may choose to immediately reduce their workforce. A RIF can be accomplished by terminating employees or by means of attrition.
 - When an employee is terminated pursuant to a reduction in force, it is sometimes referred to as being "riffed."
 - However, some employers use layoff as a synonym for what is a permanent separation. This may be confusing to the affected employee because it implies that recall is a possibility which may prevent the employee from actively seeking a new job.

Downsizing Templates & Toolkits

Below is a list of tool kits and templates that you can adapt for your downsizing considerations.

- [SHRM Downsizing Toolkit](#)
- [Reduction In Force Checklist](#)
- [WARN Act](#) (Large agencies should review notification requirements for the WARN Act)
 - A mass layoff is defined as a Reduction in Force that:
 - is not the result of a plant closing, and
 - results in an employment loss at the single site of employment during any 30-day period for
 - at least 33 percent of the active full-time employees and
 - at least 50 full-time employees
 - Notably, for mass layoffs, when 500 or more full-time employees are affected, the 33 percent requirement does not apply, and notice is required if the other criteria are met
- [Recall policy template](#)
- [How to Conduct a Layoff](#)
- [Offboarding Checklist](#)
- [Offboarding webinar: How to handle with Compassion](#)

- [Offboarding slides: How to handle with Compassion](#)

Unemployment Benefits

These resources help to explain unemployment as an employer. (Sources:Shrm.org and Dol.gov)

- [Unemployment article](#)
- [Employer Responsibility for UI Claims](#)
- [DOL Resource Guide](#)
- [Unemployment Resource by State](#)
- [Work Share Programs by State](#)

How to Deal with Anxiety & Stress

- [Corona Virus Sanity Guide](#)
- [Tips for Remote Work – provided by Barkley](#)
- [Free webinar to – Empowering staff](#)
- [Thrive Newsletter](#)