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**Families First Coronavirus Response Act FAQ’s**

**For more information on this act and paid leave requirements, visit:** <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

* **Would an employee who is afraid of coming to work and contracting COVID-19 be eligible for paid sick leave?**

No, an employee’s concern for contracting the virus is not included within the six allowable reasons for leave. The employee, however, may be eligible for leave under another employer policy (such as a leave of absence, accrued vacation, etc.) as per the requirements of that policy.

If an employee’s fear, however, is related to a serious health condition, they may be eligible for traditional FMLA leave. Normal notice and certification procedures would be followed for that determination.

* **Must employees taking FLMA leave due to the new school and childcare closing rules work at a location within 50 employees within a 75-mile radius to be eligible?**

No, the new expanded rules do not require this. Employees taking FMLA for any other reason must still meet this requirement.

* **How and when do employers apply for the tax credit?**

Employers pay the paid leave up front and take a dollar-for-dollar tax credit by retaining the amount of payroll taxes equal to the amount of qualifying sick and childcare leave that it paid, rather than deposit them with the IRS. This is effective as of April 1, 2020.

The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

For example, if an eligible employer paid $5,000 in sick leave and is otherwise required to deposit $8,000 in payroll taxes, the employer would only be required under the law to deposit $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.

Equivalent childcare leave and sick leave credit amounts are available to self-employed individuals under similar circumstances. These credits will be claimed on their income tax return and will reduce estimated tax payments. More guidance on this is expected from the IRS.

Please see [extensive guidance](https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#substantiate_eligibility) including Q&As from the IRS for more information.

* **Are married spouses working for the same employer entitled to 12 weeks each of FMLA leave for childcare or must they split the 12 weeks as with traditional FMLA leave?**

The FFCRA is silent on this matter. It simply states that an employee will be eligible for leave “due to a need for leave to care for” his or her child, and the Department of Labor (DOL) may decide to split the leave between parents. In some situations, both parents may be needed to care for a child. But in situations where one parent may suffice, employers may be able to limit the entitlement to 12 weeks between parents working for the same employer. More guidance is needed, and employers should consult with legal counsel before requiring parents to share leave.

* **If an employee takes FMLA leave for their own serious health condition related to COVID-19, is the employer eligible for this new category of paid FMLA leave?**

No. The new paid FMLA leave entitlement is for one reason only—to care for a child whose school or place of care is closed or whose caregiver is unavailable due to COVID-19-related issues.

Such an employee would, however, likely be eligible for up to 10 days of emergency paid sick leave if:

1. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.
2. The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.

* **If an employer requires an employee to self-quarantine, such as after returning from personal travel, would the employee be eligible for emergency paid sick leave?**

No. Only an employee subject to a government order to quarantine or one advised to do so by a health care provider is eligible to receive emergency paid sick leave.

* **Emergency paid sick leave may be used to care for an individual who is subject to either the first or second allowable reason for paid leave. Who qualifies as an “Individual”?**

“Individual” means an immediate family member, roommate, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined. Additionally, the individual being cared for must: (a) be subject to a Federal, State, or local quarantine or isolation order as described above; or (b) have been advised by a health care provider to self-quarantine based on a belief that he or she has COVID-19, may have COVID-19, or is particularly vulnerable to COVID-19.

* **The sixth allowable reason for emergency paid sick leave is vague. What does it mean?**

The sixth reason states, “The employee is experiencing any other substantially similar condition specified by the secretary of health and human services in consultation with the secretary of the treasury and the secretary of labor.” In general, this means that some COVID-19-related condition in the future, as determined and announced by the secretary of health and human services, will enable an employee to take paid sick leave. Because such a condition has not yet been identified, an employer does not yet have to approve leave for this reason.

* **How long should employees with COVID-19 symptoms or a positive test stay at home before returning to work?**

The CDC has provided guidance on this which they update as recommendations change. See, [Discontinuation of Home Isolation for Persons with COVID-19 (Interim Guidance)](https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html).

* **What should we tell our employees?**

Providing employees with factual information from health officials and assuring employees that their health and safety is paramount can help to prepare and educate employees without causing panic.

* **Can I tell employees if a co-worker has tested positive for the coronavirus or other communicable disease?**

No. The Americans with Disabilities Act (ADA) privacy rules restrict employers from sharing personal health information of an employee. Employers should inform employees that possible exposure has occurred in the workplace without disclosing any identifying information about the individual who tested positive.

* **Can I ask an employee if they have the coronavirus?**

Employers can ask an employee how he or she is feeling in general but should not inquire about a specific illness as that could rise to the level of a disability related inquiry under the ADA.

* **What should we do if an employee discloses that they have been in close contact with a person who tested positive for COVID-19?**

According to [CDC guidance](https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html), essential employees who have had close contact with a person diagnosed with COVID-19 may continue to work as long as the employee is asymptomatic and protective measures are taken. This includes screening the employee each workday for fever and other symptoms, having the employee wear a mask and regularly disinfecting work areas.

* **Can I require an employee to go home (or stay home) if he or she is sick?**

Yes, employees who show signs of respiratory illness can be asked to leave the workplace and stay at home until they are symptom free.

* **Can an employee refuse to report to work due to fear of contacting the coronavirus?**

Under the Occupation Safety and Health Act (OSH Act), employees are only entitled to refuse to work if they believe they are in imminent danger. See [Workers' Right to Refuse Dangerous Work](https://www.osha.gov/right-to-refuse.html).

* **Can we require a doctor’s note before allowing a sick employee to return to work?**

If an employer applies the practice consistently, clearance from a health care provider to return to work can be required. However, guidance from the Centers for Disease Control and Prevention (CDC) suggests employers remove such requirements during a health crisis as access to health care providers may be limited.

* **Should employees returning from business or personal travel be required to stay away of the office for 14 days?**

Employees returning from countries that have a Level 3 Travel Health Notice from the CDC should stay home for a period of 14 days after returning to the United States. See [Travelers from Countries with Widespread Sustained (Ongoing) Transmission Arriving in the United States](https://www.cdc.gov/coronavirus/2019-ncov/travelers/after-travel-precautions.html).

* **Do I have to pay nonexempt employees who are sent home from work because they are sick?**

Most employers provide employees with paid time off for illness. Nonexempt employees who do not have paid leave available are not required to be paid for such absences, unless there is a collective bargaining agreement indicating otherwise.

* **Do I have to pay exempt employees who are sent home from work because they are sick?**

An exempt employee must be paid for partial-day absences but may have his or her salary reduced for full-day absences due to sickness if the employer offers a paid sick leave benefit and the employee has exhausted that leave or is not yet eligible for the leave. See [What is a “bona fide” sick leave plan under the FLSA Salary Basis Regulation?](https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/what-is-a-bona-fide-sick-leave-plan-.aspx)

* **Are absences due to the coronavirus covered by FMLA?**

The Families First Coronavirus Response Act (FFCRA) allows an employee to take paid FMLA leave if he or she can't work (or telework) because their minor child's school or childcare service is closed due to COVID-19.

Infection with the coronavirus would also likely qualify as a "serious health condition" under the FMLA, allowing an employee to take FMLA protected leave.

* **Do we have to allow employees to work from home?**

While not required, telecommuting may be a practical measure to reduce exposure of the virus in some work environments. Employees with disabilities that put them at high risk for complications may request telework as a reasonable accommodation to reduce their chances of infection during a pandemic. See [Pandemic Preparedness in the Workplace and the ADA](https://www.eeoc.gov/facts/pandemic_flu.html).

* **Can I take employees’ temperatures to ensure they don’t have a fever when reporting to work?**

Because the CDC and state/local health authorities have acknowledged community spread of COVID-19, employers may measure employees' body temperature. As with all medical information, employers must maintain the confidentiality of employee temperatures and other symptoms as required by the ADA. See [EEOC: Employers Now May Take Employees’ Temperatures](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm)

* **Should employees wear a face mask at work?**

The CDC currently recommends individuals wear simple cloth face coverings in public settings where other social distancing measures are difficult to maintain. However, surgical masks or N-95 respirators are critical supplies that should continue to be reserved for healthcare workers and other medical first responders. See [Recommendation Regarding the Use of Cloth Face Coverings.](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html)

The information in this FAQ provided by SHERM.