

Public Employer Summary of H.R. 6201 – Family First Coronavirus Response Act

GENERAL:

FFCRA consists of 3 components that impact public employers

1. Family and Medical Leave Act Expansion
2. Public Health Emergency Paid Sick Leave Act
3. Coverage of Testing for COVID-19

Link to text of H.R. 6201: <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

Effective Date: FFCRA takes effect April 2nd, Effective until December 31, 2020

Definition of Public Health Emergency: “An emergency with respect to COVID-19 declared by a Federal, State, or local authority.”

Part 1: Family and Medical Leave Act Expansion (Sec. 3101)

Amends the FMLA, 29 U.S.C. 2611, et. seq. Consists of an expansion of the reasons for the use of Family Medical Leave. It does not provide an additional 12 weeks for the separate reason of public health emergency. 29 USC 2612(a)(1)(F).

Expanded Coverage/Eligibility (Sec. 3102, Sec. 110(a)(1))

- Eligible Employee changed to mean an employee who has been employed for at least 30 calendar days who is requesting “Public Health Emergency Leave”
 - Compare to traditional requirement of 12 months and 1250 hours worked
- Covered Employer changed to employer with “fewer than 500 employees”
 - Compare to traditional: 50 or more for each working day during 20 or more calendar workweeks

Exclusions (Sec 3102, Sec. 110(a)(3))

- The Secretary of Labor is authorized to issue regulations that would exclude:
 - Certain health care providers and emergency responders from the definition of eligible employees
 - Employers with fewer than 50 employees from the requirements of the act when the requirements would jeopardize the viability of the business
- Sec. 3105 of the Bill allows employers of employees who are health care providers or emergency responders to exclude such employees from the application of the public health emergency leave provisions
- Health Care Providers Defined (from FMLA)
 - A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices
 - Any other person determined by the Secretary to be capable of providing health care services
- Emergency Responders Defined (from Homeland Security)
 - According to U.S. Homeland Security Presidential Directive HSPD-8: The term *first responder* refers to those individuals who in the early stages of an incident are responsible for the protection and preservation of life, property, evidence, and the environment, including emergency response providers as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. § 101), as well as emergency management, public health, clinical care, public works, and

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other skilled support personnel (such as equipment operators) that provide immediate support services during prevention, response, and recovery operations.

- According to 6 U.S.C. § 101(6): The term *emergency response providers* includes Federal, State, and local governmental and nongovernmental emergency public safety, fire, law enforcement, emergency response, emergency medical services providers (including hospital emergency facilities), and related personnel, agencies, and authorities.

“Qualifying Need” for Public Health Emergency Leave (Sec. 3102, Sec. 110 (a)(2)(A))

- Expands FMLA qualifying need when an employee is unable to work or telework due to a need for leave to care for the son or daughter under 18 years of age if the child’s school/place of care has been closed or if the child care provider of the child(ren) is unavailable due to a public health emergency (29 USC 2612(a)(1)(F))
- Employees continue to have FMLA leave under their own or their family’s “serious medical condition”
 - Adhere to a required or recommended quarantine due to exposure or symptoms of coronavirus or
 - Care for an at-risk family member who is adhering to a required or recommendation to quarantine due to exposure to or symptoms of coronavirus

Calculating Paid Leave for Public Health Emergency Leave (Sec. 3102, Sec. 110 (b)&(c))

- First 10 days of employee leave may consist of unpaid leave
 - Employee may elect to substitute accrued paid leaves during this 10 days
- Law does not reference whether the employer may pay the employees during the first 10 days
- After the 10 days, for the remainder of the 12 weeks of leave, Employers must pay employees at least 2/3 of the employee’s regular rate for the number of hours the employee would otherwise be normally scheduled.
 - Cap at \$200 per day and \$10,000 in the aggregate for each employee
- Employees with irregular schedules: Calculate based on the average number of hours the employee worked for the six months prior to taking Emergency FMLA
 - For employees who have worked less than six months use the employee’s reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work
- Employee required to provide notice where foreseeable and practicable

Job Restoration (Sec. 3102, Sec. 110(d))

- Employers with 25 or more employees must return employees to the same or equivalent position upon return to work (same as traditional FMLA)
- Employers with fewer than 25 employees are generally excluded from this requirement if the position no longer exists due to an economic downturn or other circumstances caused by a public health emergency.
 - This exclusion subject to the employer making reasonable attempts to return the employee to an equivalent position and requires the employer to make efforts to return the employee to work for up to a year following the employee’s leave

Part 2: Emergency Paid Sick Leave Act (Sec. 5101), Effective April 2, 2020

Reasons Requiring Paid Sick Time (Sec. 5102(a))

- Employer must provide emergency paid sick time to employees unable to work or telecommute because the employee is:
 1. Subject to a Federal, state, or local quarantine/isolation order related to COVID-19
 2. Under the advice of a health care provider to self-quarantine

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3. Experiencing symptoms of COVID-19 and is seeking a medical diagnosis
 4. Caring for an individual who is in self-quarantine on the advice of a health care provider or due to a federal, state, or local order
 - Note → not limited to just family members
 5. Caring for a child if the school or place of care has closed or if the child care provider of the child is unavailable due to COVID-19 precautions
 6. Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services
- An Employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this subsection (Sec. 5102(a))

Duration and Number of Hours of EPSL (Sec. 5102(b))

- Full time employees = 80 hours at regular rate
- Part time employees = the number of hours that such employee works, on average, over a 2-week period
- For categories 1, 2, and 3 above (Employee’s own COVID-related condition), employers must pay at the regular rate
 - Capped at \$511 per day or \$5,110 in aggregate
- For categories 4, 5, and 6 (caring for another and “substantially similar conditions”), Employers must pay at least 2/3 of the employee’s regular rate
 - Capped at \$200 per day or \$2,000 in aggregate
- No carryover to the following year

Employee Eligibility

- Employees are entitled to emergency paid sick leave regardless of how long the employee has been employed by the employer

Employer Coverage

- Includes any public employer that employs one or more employees, and any private employer that employs fewer than 500 employees

Notice Requirement and Prohibited Acts (Sec. 5102(d) – Sec. 5104)

- **Notice:** Employers required to post a notice of the requirements described in the Act
 - Secretary of Labor to publish such a notice within one week
- **Prohibited Acts**
 - Cannot require employee to use other paid leaves provided by the employer before the employee uses emergency paid sick leave
 - Cannot require an employee to find a replacement employee while the employee is using leave under the Act
 - Cannot discharge or discipline employees taking leave in accordance with Act

Interplay with Laws and Policies (Sec. 5107)

- Nothing in the Act shall be construed to:
 - In any way diminish the rights or benefits that an employee is entitled to under any:
 - Other Federal, State, or local law;
 - Collective Bargaining Agreement; or

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- Existing employer policy
- Require financial or other reimbursement to an employee from an employer upon the employee's separation from employment for paid sick time under the Act that has not been used by such employee

Part 3: Coverage of Testing for COVID-19 (Sec. 6001)

- Employers offering group health insurance benefits are prohibited from imposing any cost sharing requirements (including deductibles, co payments, and coinsurance) for the following items/services furnished during the COVID-19 health emergency:
 - (1) In vitro diagnostic products and their administration
 - (i) COVID-19 testing that is “approved, cleared, or authorized” by the FDA
 - (2) Items and services furnished to an individual that result in an order for administration of testing under item (1) at any of the following:
 - Health Care Provider Office Visits (in person and telehealth visits)
 - Urgent Care Center Visits
 - Emergency Room Visits

Tax Credit for Cost of Providing Paid Sick Leave as Required by FFRCA is NOT Available to Public Employers (Sec. 7001(e)(4))

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