

COVID-19 FREQUENTLY ASKED QUESTIONS

1. What is the Families First Coronavirus Response Act (FFCRA)?

The Federal 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. 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**:

- *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay, up to a specified maximum, 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, up to a specified daily maximum, 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**:

- *Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay, up to a specified daily maximum, 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.*

For more information regarding FFCRA, please see this link:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

2. What are the New York COVID-19 paid leave benefits?

The leave available to employees if they are subject to a mandatory or precautionary order of quarantine or isolation depends on the size of your business as of January 1, 2020, and/or whether you are a private or public employer.

Small businesses with 10 or fewer employees as of January 1, 2020, and that had a net annual income less than \$1 million last year must provide your employees with:

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- Job protection for the duration of the order of quarantine or isolation

Your employees can access benefits through your Paid Family Leave (PFL) and disability (DBL) benefits policy, for the duration of the order of quarantine or isolation.

Medium businesses with 11-99 employees as of January 1, 2020, and smaller employers (1-10 employees) that had a net annual income greater than \$1 million last year must provide your employees with:

- Job protection for the duration of the order of quarantine or isolation
- At least 5 days of paid sick leave

Your employees can then access benefits through your Paid Family Leave and disability benefits policy.

Large businesses with 100 or more employees as of January 1, 2020, must provide your employees with:

- Job protection for the duration of the order of quarantine or isolation
- At least 14 days of paid sick leave

Public employers (no matter how many employees) must provide your employees with:

- Job protection for the duration of the order of quarantine or isolation
- At least 14 days of paid sick leave

Most employees whose minor dependent child is under a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the Department of Health, local board of health, or any government entity duly authorized to issue such order due to COVID-19, may be eligible to take Paid Family Leave to care for them. Eligibility for covered employees is the same as it is for other Paid Family Leave. More information can be found at:

<https://paidfamilyleave.ny.gov/COVID19>

3. [What if we already have an employee on leave that now seeks additional leave that is COVID-19 related, particularly relating to childcare issues?](#)

If you have eligible employees, they are entitled to paid sick leave under the Emergency Paid Sick Leave Act under FFCRA regardless of how much PTO/vacation time they have already taken.

However, if your company is covered by the Family and Medical Leave Act (FMLA) prior to April 1, 2020, your employee's eligibility for expanded family and medical leave depends on how much leave the employee has already taken during the 12-month period that your employer uses for FMLA leave. Employees may take a total of 12 workweeks for FMLA or expanded family and medical leave reasons during a 12-month period. If you have taken some, but not all, of the 12 workweeks of your leave under FMLA during the current 12-month period determined by your employer, you may take the remaining portion of leave available. If you have already taken 12

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workweeks of FMLA leave during this 12-month period, you may not take additional expanded family and medical leave.

If your company only becomes covered under the FMLA on April 1, 2020, this analysis does not apply.

In addition, if you have eligible employees, they are entitled to paid sick leave under the New York Emergency Paid Sick Leave regardless of how much PTO they have already taken. Please note that New York Sick Leave cannot be taken to care for a child.

In addition, New York DBL/PFL time taken under COVID-19 benefits counts as duration taken under State disability (maximum of 26 weeks per year) and Paid Family Leave (maximum of 10 weeks in 2020) and reduces the remaining benefit durations accordingly.

Employers have a right to request documentation to certify the leaves.

If an employee is out on personal leave, and requests an extension due to COVID-19, employers will need to manage these leaves per company policy, define the amount of time the employee is approved to be out, and how they will choose to handle any interim changes to company policy during a pandemic.

4. **Regarding the healthcare worker exemption under the Families First Coronavirus Response Act (FFCRA), does the employer have to file for an exemption for the exempt employees, or can the employer make the decision themselves? What is the appropriate process to follow? Would this apply to all employees of the healthcare provider employer?**

Employers do not have to apply for an exemption; however, the Department of Labor (Department) is requesting employers to be careful about who to exempt and how they are exempting the employees under this, in order to help prevent the spread of COVID-19. The exemption should be applied on a case-by-case basis.

For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services,

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produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state's or territory's or the District of Columbia's response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.

The definition can be found here: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

5. How can we develop contingency staffing plans for essential healthcare workers, as an increasing amount of healthcare workers are testing positive for COVID-19?

The following checklist provided by the Public Health Emergency Department of Health and Human Services may be helpful:

<https://www.phe.gov/emergency/events/COVID19/Documents/COVID-19%20Healthcare%20Planning%20Checklist.pdf>

The checklist outlines many important considerations such as determining staffing plans, processes, and policies.

In addition, the NY Department of Health has released an updated protocol sheet dated March 31, 2020 for healthcare personnel:

https://coronavirus.health.ny.gov/system/files/documents/2020/04/doh_covid19_healthcarepersonnelreturntowork_rev2_033120.pdf

6. Is hazard pay required to be paid for essential employees?

Based on current information and as of April 10, 2020, no, hazard pay is not required at this time for essential or front line employees in healthcare or other industries. There has been increasing media coverage on the topic as some lawmakers are advocating for a proposal on hazard pay for certain essential workers to be included in the phase four coronavirus relief bill and as such, we may see this change in the future.

7. How can we navigate both the NY Emergency Paid Sick Leave Act and the Families First Coronavirus Response Act?

Based on our current understanding, if the employer is subject to the Families First Coronavirus Response Act and if the Federal program benefits are greater than the mandated NY benefits, the employee will not be eligible for the state benefits. The NY program will generally only be available for New Yorkers who exceed the Federal program's salary cap, presuming all eligibility requirements are satisfied. This should be determined on an individual basis.

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