



Updated as of April 5, 2020

Congress Passes COVID-19 Coronavirus Response Act March 20, 2020

On March 18, the Senate passed the Families First Coronavirus Response Act. This is designed to address the impact of the COVID-19 outbreak on American families. It introduces a federal mandated paid sick leave and temporarily expands the Family and Medical Leave Act. For ACSI Christian schools this does apply; there is no exemption for private employers or nonprofits. This will go into effect on **April 1** and expires **December 31, 2020**. **It has two provisions that impact our Christian Schools.**

Provision One – Emergency Paid Sick Leave

Reasons for Paid Sick Leave –This Act allows an eligible employee to take paid sick leave because the employee is:

1. subject to a federal, state or local quarantine or isolation order related to COVID-19; (ACSI believes this would include business closures and school closures) See Q and A at the end of this article.
2. advised by a health care provider to self-quarantine due to COVID-19 concerns;
3. experiencing COVID-19 symptoms and seeking medical diagnosis; (ACSI believes this means staying home because of symptoms or medical diagnosis)
4. caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns; (An individual is not defined, so this could be anyone, even outside of family)
5. caring for the employee’s child if the child’s school or place of care is closed or the child’s care provider is unavailable due to public health emergency; or
6. 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.

Eligibility – This law requires employers with fewer than 500 employees to provide all full-time employees (regardless of how long the employee has been employed) with **80 hours of paid sick leave** at the employee’s regular rate up to \$511 per day (\$5,110 total per employee) for qualified reasons 1-3 listed above or two-thirds

of the employee's regular rate up to \$200 per day (\$2,000 total per employee) to care for the qualifying reasons 4-6 listed above. These 80 hours cannot be carried over to the following year like other paid leave provided by the employer.

Part-time Employees – If an employee works part-time or has an irregular schedule, their pay would be based on the average number of hours the employee worked for the previous six months. If they have worked less than six months, they would be paid on the average number of hours worked over a two-week period.

Additional Guidance

- Sick leave does not carry over to the next year
- The employer may not require employee as a condition of paid leave to find a replacement to cover scheduled hours
- The employee may first use this paid sick time under the law before other paid leave
- The Employer may not require the employee to use other paid leave provided by the employer before using this paid sick leave
- The employer must post a notice regarding the requirements of the law. The notice is now available and on our Legal Resources webpage.
- After the first workday (or portion thereof) an employee receives paid sick leave, the employer may “require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.”
- The DOL does provide a possible exemption for employers with less than 50 employees. (See below)

Provision 2 – Emergency Family and Medical Leave Act

This Act (separate from the Emergency Paid Sick Leave) amends and expands the Family Medical Leave Act (FMLA). Currently, FMLA covers those employers with 50 or more employees. This will now cover any employer with 500 or fewer employees. Again, this includes Christian Schools of any size if you have less than 500 employees. It also lowers the requirement of eligibility of employees to having worked at least 30 days before the leave is taken. This leave is job-protected. The Act does allow the Secretary of Labor to exempt employers with fewer than 50 employees if the leave would jeopardize the viability of their business. See information below.

Eligibility – An employee that has been employed for at least 30 days before the first day of leave may take up to 12 weeks of job-protected leave to allow an employee, who is unable to work or telework, to care for the employee's child, under 18 years of age, if the child's school or place of care is closed or the childcare provider is unavailable due a public health emergency. This is the only qualifying reason for this paid leave. The **first 10 days** of this leave is unpaid.

However, the employee may use their **80 hours** provided by the Emergency Paid Sick Leave Act (previously spoken about above). After the 10-day period, the employer must pay full-time employees at **two-thirds** the employee's regular rate for the number of hours the employee would normally be scheduled. The Act limits the pay to \$200 per day and a total of \$10,000 per employee.

Part-time Employees – If an employee works part-time or has an irregular schedule, their pay would be based on the average number of hours the employee worked for the previous six months. Employees who have worked less than six months prior to the leave should be paid the average number of hours the employee would normally be scheduled to work.

Job Restoration – Employers with 25 or more employees will have the same obligation as under FMLA to return any employee who has taken the Emergency FMLA to be restored to the same or equivalent position.

Tax Credits for Paid Sick and Paid Family and Medical Leave

The Act provides a series of refundable tax credits for an employer who is required to provide either Emergency Paid Sick and Paid Family and Medical Leave. The tax credits can be used against the employer portion of the Social Security Taxes. Employers are entitled to a refundable tax credit equal to 100% of the qualified emergency sick leave and FMLA wages paid for each calendar quarter.

The amount of the FFCRA tax credits equals the amount of EPSL and EFMLA paid to employees between April 1, 2020 and December 31, 2020, unless FFCRA is extended or modified. Thus, credits cover up to ten days of EPSL and up to ten weeks of the EFMLA for each employee, subject to the caps on payment (i.e., \$511 per day/\$5,110 in aggregate or \$200 per day/\$2,000 in aggregate). Employers may pay EPSL and EFMLA at rates in excess of the caps, but the excess cannot be claimed as a credit. However, employers may also include in the credit the amount of health plan expenses allocable to the EPSL and EFMLA payments (excluding amounts that the employee paid for with after-tax contributions), plus the amount of the eligible employer's share of Medicare taxes imposed on those payments.

For the FFCRA tax credits, an eligible employer is an employer with less than 500 employees required to provide EPSL and EFMLA. An eligible employer may receive a credit for the wages paid for EPSL and EFMLA, (including qualified health plan expenses and the employer's share of Medicare tax on such leave wages) ("Credit"). An employer can also receive a refund, either in the form of an overpayment or an advanced payment, from the IRS to the extent the Credit is in excess of the employer's social security tax owed for the quarter.

An eligible employer can obtain the Credit in two ways. The employer can either (1) take the Credit from the amount the employer would have otherwise had to pay in Federal Employment Taxes (defined below) during that same quarter, (2) obtain an overpayment or request an advance from the IRS to the extent the amount of

Federal Employment Taxes from the same quarter is not enough to cover the Credit. To request the advance, an employer should file IRS Form 7200.

Federal Employment Taxes that are available for retention include federal income taxes withheld from employees, the employees' share of social security and Medicare taxes, and the employer's share of social security and Medicare taxes with respect to all employees.

- Examples

- If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$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.

Employers Need to Document Their Entitlement to the Credits.

In order to substantiate a claim for FFCRA Credits from the IRS, employers are advised by the IRS to maintain the following records for four years:

- Documentation to show how the employer determined the EPSL and EFMLA paid to eligible employees for the Credit, including records of work, telework, and EPSL and EFMLA.
- Documentation to show how the employer determined the amount of qualified health plan expenses allocated to EPSL and EFMLA.
- Copies of any completed Forms 7200 submitted to the IRS.
- Copies of the completed quarterly payroll tax return forms, such as Forms 941, submitted to the IRS or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer's entitlement to the Credit claimed for Form 941.

The IRS also advises that employers can substantiate eligibility for the FFCRA Credits if they receive written requests for leave from employees that state:

- The employee's name;
- The date or dates for which leave is requested;
- The COVID-19 reason the employee is requesting leave and written support for such reason; and

- The employee is unable to work, including telework, for such reason.

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity issuing the order or the health care professional issuing the advice, and, if the person quarantining is not the employee, that person's name and relation to the employee.

In the case of a leave request due to a school closing/child care unavailability, the statement should also include the name and age of the child, the name of the school/child care, a representation that no one else suitable will care for the child, and for a child older than fourteen needing care during daylight hours, a statement that special circumstances exist requiring the employee to provide care to that child.

ACSI will continue to follow as this new law unfolds, and provide updates on our COVID-19 Resource page at <https://community.acsi.org/coronavirusresources/home>

Small Business Exemption

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave **due to school or place of care closures or child care provider unavailability for COVID-19 related reasons** and (b) **expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons** when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

A small business is exempt from certain paid sick leave and expanded family and medical leave requirements if providing an employee such leave would jeopardize the viability of the business as a going concern. This means a small

business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- employer employs fewer than 50 employees;
- leave is requested because the child's school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons; and
- an authorized officer of the business has determined that at least one of the three conditions described in above is satisfied.

Businesses that make this determination are also required to document that they have made a determination that this exemption is applicable, and they are required to retain this documentation. Further, regardless of whether a small business chooses the exemption, the employer is still required to post the required Federal notices regarding employees' rights to FFCRA leaves.

Department of Labor Guidance on School or Business Closures

If my employer closed my worksite before April 1, 2020 (the effective date of the FFCRA), can I still get paid sick leave or expanded family and medical leave?

No. If, prior to the FFCRA's effective date, your employer sent you home and stops paying you because it does not have work for you to do, you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility.

It should be noted, however, that if your employer is paying you pursuant to a paid leave policy or State or local requirements, you are not eligible for unemployment insurance.

If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but before I go out on leave, can I still get paid sick leave and/or expanded family and medical leave?

No. If your employer closes after the FFCRA's effective date (even if you requested leave prior to the closure), you will not get paid sick leave or expanded family and medical leave, but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility.

If my employer is open, but furloughs me on or after April 1, 2020, can I receive paid sick leave or expanded family and medical leave?

No. If your employer furloughs you because it does not have enough work or business for you, you are not entitled to then take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility.

The Department of Labor is continually updated there FAQs on FFCRA. You should check this website consistently for new information.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

***Notice:** This article is designed to provide accurate and authoritative information in regard to the subject matter covered. It has been provided to member schools with the understanding that ACSI is not engaged in rendering legal, accounting, tax, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought. Laws vary by jurisdiction, and the specific application of laws to particular facts requires the advice of an attorney.*

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