



Updated as of March 29, 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 2** and expires **December 31, 2020**. **It has two provisions that impact our Christian Schools.** (New Guidance as of March 24 - New Start Date is April 1, 2020)

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. [\(No clear guidance on what this means\)](#)

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 as of March 24, 2020

- 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.”
- There will be coming guidance to address how employers will retain an amount of payroll taxes equal to the amount of paid leave that they paid, rather than deposit them with the IRS.
- 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.

- **Small Business Exemption** – Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closing or childcare unavailability where the requirements would jeopardize the ability of the business to continue. The exemption will be

available based on simple and clear criteria that make it available in circumstance involving jeopardy to the viability of an employer's business as a growing concern. The Department of Labor will provide emergency guidance and rulemaking to clearly articulate the standard.

- Furloughed or Laid Off Employees - An argument can be advanced that if an employer places its employees on furlough or lay off prior to the FFCRA's effective date (April 1), then they would not be eligible for leave under the provision; however, the express language of the Act is unclear on that topic. At minimum, employer should take care not to base lay off or furlough decision on which employees are likely to need leave-or risk claims for retaliation/interference.

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.

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 qualified sick leave and FMLA wages are capped based on the numbers shared previously in the article. There will be more guidance coming out on how this will take place. We recommend you work with your payroll provider regarding the tax credits.

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>

New Guidance as of March 24, 2020

- **Small Business Exemption – See new details below.**
- The employer must post a notice regarding the requirements of the law. (The notice is now available and on our Legal Resources webpage.)
- Example on reimbursement same as above.

The following are updated from the Department of Labor.

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 (the effective date of the FFCRA), 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.

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

DOL Guidance on Small Business Exemption

When does the small business exemption apply to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing paid sick leave and 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.

If I am a small business with fewer than 50 employees, am I exempt from the requirements to provide paid sick leave or expanded family and medical leave?

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 child care 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 the question just above is satisfied.

The Department encourages employers and employees to collaborate to reach the best solution for maintaining the business and ensuring employee safety.

***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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