Guide to the Families First Coronavirus Response Act

How does the Families First Coronavirus Response Act (FFCRA) apply to farms?

The FFCRA was created to protect employees affected by COVID-19 by providing mandatory paid sick and family leave. Employers who provide the leave are eligible for tax credit or refund equal to the required leave paid. FFCRA currently applies through December 31, 2020. If your farm employs full or part-time workers, whether hourly or salaried, the farm is an employer that may be covered by FFCRA.

FFCRA is actually a set of acts consisting of the Emergency Paid Sick Leave Act and the Emergency Family Medical Leave Act. The FFCRA aims to address hardships arising from the coronavirus pandemic. The Emergency Paid Sick Leave Act (EPSLA) focuses on paid sick leave, while the Emergency Family and Medical Leave Expansion Act (EFMLEA) deals with extended family leave.

Emergency Paid Sick Leave Act (EPSLA)

What is the paid sick leave program?

EPSLA is a paid sick leave program that provides up to 80 hours or two weeks paid sick leave to eligible employees who cannot work due to COVID-19. The rule applies to businesses that employ 500 or less employees.

Who is an eligible employee?

Full-time and part-time workers paid hourly or on a salary, workers who come to a farm through a temp agency or H2A program, undocumented workers, and seasonal and migrant workers all are eligible. Workers within these categories are eligible for paid leave regardless of how long they’ve worked for their employer - including workers on their first day. Independent contractors, furloughed, and laid off employees do not qualify, but may seek payment through state unemployment insurance or the Pandemic Unemployment Program.

In what situations may an employee take leave due to COVID-19?

There are different situations when sick leave can be taken, and the amount of sick leave will vary. In each case, the employee should give his or her employer the necessary information to establish eligibility. The list below describes each situation, sets out the level of compensation and identifies the documents and records needed for employers to seek reimbursement from the Federal government.

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19

Notice: This guide is for informational purposes only and does not provide legal advice or create an attorney-client relationship. You should contact an attorney to obtain advice with respect to a particular issue or problem.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19

- Must have been advised by a doctor to quarantine as a result of exposure or vulnerability based on underlying conditions to COVID-19.
- Employers must pay employees 100% of the wages they normally earn.
- The employee must provide the name of their health care provider advising self-quarantine to their employer for the record.

3. The employee is experiencing symptoms of COVID–19 and seeking medical diagnosis from a health care provider

- Must be actively seeking a COVID-19 diagnosis such as booking appointment and seeking confirmation of their suspicion. The paid leave is only offered until they receive confirmation that it is not COVID-19 or the two weeks run out.
- Employers must pay employees 100% of the wages they normally earn.
- Employers must obtain additional information required under FMLA program including:
  - The name, address, phone number, and fax number of the health care provider, and the type of medical practice/specialization;
  - Approximate date of when the health condition started and probable duration;
  - Description of the medical facts regarding the patient’s health condition and information sufficient to demonstrate the employee cannot perform the essential functions of the job.

4. The employee is caring for an individual who is subject to a quarantine/isolation order

- Must be an immediate family member, roommate, or similar person whom the employee has a relationship that creates the expectation they would care for the person if they were quarantined.
- Employers must pay employees 2/3 of the wages they normally earn.
- Employer must have either the government entity that issues the quarantine or isolation order to which the individual is subject, or the name of the healthcare provider who advised the self-quarantine.

5. The employee is caring for his or her child whose school or place of care has been closed for a period of time or the child care provider of such child is unavailable for reasons related to COVID–19

- Only applies when the employee is the only suitable person available to care for their child under 18 years old.
- Employers must pay employees 2/3 of the wages they normally earn.
• The employer must have the name of the child being cared for, the name of the school/place of care/child care provider that closed, and a statement representing that no other suitable person is available to care for the child during the period of requested leave.

6. The employee has a substantially similar condition as specified by the Secretary of Health and Human Services

• Applies when an employee is experiencing symptoms not defined as COVID-19 related symptoms at the time that the law was written but were recognized at the time the employee requests leave.
• Employers must pay employees 2/3 of the wages they normally earn.
• Employer must obtain additional information required under FMLA program including:
  o The name, address, phone number, and fax number of the health care provider, and the type of medical practice/specialization;
  o Approximate date of when the health condition started and probable duration;
  o Description of the medical facts regarding the patient’s health condition and information sufficient to demonstrate the employee cannot perform the essential functions of the job.

How are the hours calculated for an employee taking sick leave?

The cap is 80 hours (40 hours for two weeks). If not employed full-time, workers are paid for the number of hours they normally work. If that fluctuates, employers take the average over a six-month period to determine the number of hours of compensation.

How do employers pay employees who have the right to take leave?

Employers may pay from their own funds and be reimbursed by the federal government through refundable tax credits. Employers who pay from their own funds can compensate themselves from the money withheld from their employees’ wages that is normally paid via the employer’s quarterly tax return. If they do not have adequate funding, they can seek an upfront payment from the government.

• Pay from own funds, then seek reimbursement from IRS: How to Claim the Credits
• Request money upfront from IRS: Advance Payment of Employer Credits Due to COVID-19

Emergency Family and Medical Leave Expansion Act (EFMLEA)

What is the Family and Medical Leave Program?

The family leave program requires certain employers to provide up to 10 weeks of paid and 2 weeks unpaid emergency family and medical leave to eligible employees affected by COVID-19. Employees are eligible if caring for his or her son or daughter whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID-19. This benefit can be used in combination with the two-week paid sick leave provided by EPSLA for a total of 12 paid weeks coverage.
Who is covered under the Family and Medical Leave Program?

Covered employers are the same as the paid sick leave program, namely, employers of 500 or less employees. However, a small business exemption (discussed below) may apply.

Eligible employees are the same as the ones eligible for paid sick leave, with the additional requirement that employees must have worked for the employer in the last 30 days. Employers must pay employees 2/3 of their normal wages capped at $200 per day or $10,000 for the ten weeks. The normal hours are based on the same criteria as sick paid leave. Employers will use the same process for paying and compensation as they would with sick leave.

In what situation may an employee take family or medical leave due to COVID-19?

The only reason employees can take long-term family leave under this program is because the employee’s children can’t go to school or daycare and the employee is the only suitable person to care for their children.

Small Business exception for school and daycare closures

Employers with 50 employees or less seeking COVID-related sick or family leave may be eligible for an exemption. The employer must show that providing leave would “jeopardize the viability of their business” by demonstrating:

- Requested 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.
- The absence of the employee requesting leave would entail a substantial risk to the financial health or operational capabilities of the business because of their specialized skills, knowledge of the business, or responsibilities.
- 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 requesting leave, and these labor or services are needed for the small business to operate at a minimal capacity.

See the Federal Register for more information on documentation of need for leave.

Administrative requirements

How to document and record information

Employers must obtain a signed statement from the employee requesting leave with the following information:

- The employee’s name
- The dates for which leave is requested
- The COVID-19 qualifying reason for leave (listed above)
- Statement representing that the employee is unable to work or telework because of a COVID-19 qualifying reason
Employers should retain these records in their own possession for four years in case of an audit or enforcement action, where the information could be relevant.

**Post the Information**

All covered employers are required to display the poster about the FFCRA sick and family leave programs so employees can see it. If employees are working from home, employers may email or mail those employees the poster. [Click here for the poster.](#)

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**Looking for legal help?**

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