

**FREQUENTLY ASKED QUESTIONS FOR EMPLOYEES EMPLOYED
UNDER
COLLECTIVE BARGAINING AGREEMENTS
As of April 7, 2020**

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

- 1 Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2 Has been advised by a health care provider to self-quarantine related to COVID-19;
- 3 Is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- 4 Is caring for an individual subject to an order described (1) or self-quarantine as described in (2) above.
- 5 Is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; (*Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.*)
- 6 Is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Duration of Leave and Pay Requirements

- * For reasons 1-4 and 6: A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.
- * For reason 5: A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Calculation of Pay:

- * For leave reasons (1), (2), or (3): employees taking leave shall be paid at their regular rate up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).
- * For leave reasons (4) or (6): employees taking leave shall be paid at 2/3 their regular rate up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).
- * For leave reason (5): employees taking leave shall be paid at 2/3 their regular rate up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

Do the pay limits for FFCRA paid sick leave and FFCRA family leave include

employee wages only or do they include wages and fringe benefit payments?

- * The limits include employee wages only.
- * The FFCRA sick leave and family medical leave payment limits apply only to the employee's regular rate of pay and does not include fringe benefit payments.

Is the tax credit for FFCRA paid sick leave and family leave applicable to fringe benefits in addition to wages and what are the Employer's obligation to pay fringe benefits under FFCRA?

- * The tax credits can be taken for wages and **qualified health plan** (Welfare Fund Contribution) expenses.
- * The tax credits are not available for any other fringe benefits.
- * The eligible employer may claim a fully refundable tax credit equal to 100 percent of the qualified leave wages and allocable qualified health plan expenses (Welfare Fund) and the eligible employer's share of Medicare tax on the qualified sick leave wages it pays.
- * ACCNJ is currently working with the individual trade's Benefit Funds to address the employer's obligation to pay other fringe benefits as well as dealing with employee deductions required via the Collective Bargaining Agreement.

If an employee worked in close contact with another employee who has tested positive for COVID-19:

- * An employee who follows the advice of the employer and self-quarantines for 14 days after the employer suggests he do so because of close contact with an unidentified co-worker who since tests positive is entitled to Paid Sick Leave at full pay up to the cap of \$511 per day and \$5,110 in the aggregate.
- * The definition of "health care provider" is liberal and includes doctors and other medical professionals licensed to practice in the state. While the New Jersey Department of Health does not seem to meet the definition of "healthcare provider," the employer in this scenario is relying on that advice when advising the employee to self-quarantine due to the close contact he had with a positive employee.
- * Even without an "order" or advice from a "health care provider" to quarantine, if an employer tells an employee to quarantine, that employee would be entitled to Paid Sick Leave at the above rates.
- * It is very likely an employee's personal health care provider would advise self-quarantine once the employee informed him or her of the close contact with a positive patient.

If an employer simply informs the asymptomatic employees that they have been in close contact with someone who tested positive would the asymptomatic employees be entitled to paid sick leave?

- * The employee would have to get advice from a health care provider to self-quarantine before entitlement to Paid Sick Leave would attach. He cannot simply choose to self-quarantine based on the close contact and receive Paid Sick Leave. It is very likely that the employee’s personal health care provider would advise self-quarantine once the employee informed him or her of the close contact with a positive patient.
- * **If the employer cleans the site is that sufficient to require employees to return to work?** That would not have an impact on the quarantine since the reason for the quarantine is the potential infection of that particular close contact, who can the infect others.
- * The general guidance from the Department of Health is for certain close contacts of those who test positive to self-quarantine for 14 days after contact. Though the guidance is an “order” for the employee to stay home under the FFCRA, one of the reasons that the employee can take Paid Sick Leave is that he “has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.”

Are any of the provisions of the FFCRA retroactive?

- * The Emergency Paid Sick Leave Act imposes new leave requirements on employers that are effective beginning on April 1, 2020. They are not retroactive.

If the Governor shuts down construction projects after April 1, 2020, how does that impact employers in terms of the FFCRA?

- * According to Department of Labor guidance, if a worksite is closed or an employee is otherwise laid off due to lack of work either before or after April 1, 2020, the employee would not be entitled to paid sick leave or family medical leave.
- * If the employee is already on sick or family medical leave when the workplace shutdown occurs, the employer must pay for any paid sick leave or expanded family and medical leave used before the jobsite was shut down.
- * The FFCRA does not specifically prohibit layoffs. However, the Act does include prohibitions for discrimination and retaliation against employees . If the layoff arises because no work is available due to the shut-down order, the layoffs would not be in anticipation or response to the employees taking leave and are not barred by the Act.

What documents should employers obtain from their employees when they take leave?

The IRS states that an employer will substantiate eligibility for the sick leave or family leave credits if the employer obtains a written request for such leave from the employee in which the employee provides:

- * The employee’s name;
- * The date or dates for which leave is requested;

- * A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
- * A statement that the employee is unable to work, including by means of 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 ordering quarantine or the name of the healthcare professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

In the case of a leave request based on a school closing or childcare provider unavailability;

- * The statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care for that child.
- * Department of Labor temporary regulations for the FFCRA, which were published on April 1, 2020, state that sons or daughters over 18 are covered by the school closure/childcare unavailability portion of the Act if the child has a physical or mental disability that renders them unable to care for themselves. For those individuals, the statement that special circumstances exist requiring the employee to care for them must be provided.

An eligible employer will substantiate eligibility for the sick leave or family leave credits if, in addition to the information set forth above, the employer creates and maintains records that include the following information:

- * Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework, and qualified sick leave and/or qualified family leave.
- * Documentation to show how the employer determined the amount of qualified health plan expenses the employer allocated to wages when taking the tax credits on those expenses.
- * Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, that the employer submitted to the IRS.
- * Copies of the completed Forms 941, Employer's Quarterly Federal Tax Return, that the employer 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 on Form 941).

- * An eligible employer should keep all records of employment taxes for at least 4 years after the date the tax becomes due or is paid, whichever comes later. These documents should be available for IRS review.

The above is guidance to assist you in determining your obligations under the FFCRA. We recommend you consult with your appropriate professionals to ensure compliance.