



Coronavirus Response Act - FAQs

FMLA and Sick Leave

Emergency FMLA

The Families First Coronavirus Response Act requires that ten of the twelve weeks of FMLA be paid at a rate of no less than two-thirds of the employee's usual rate of pay related to COVID-19 by the employer. (FMLA leave for all other purposes remains unpaid.) These provisions will apply from the effective date of April 1, 2020, through December 31, 2020.

Q: When does it go into effect?

A: The new law takes effect on April 1st

Q: What can the Emergency FMLA be used for?

A: Employees can take the leave to care for a child whose school or daycare has closed.

Q: Which employees are eligible for the new Emergency FMLA leave?

A: Unlike normal FMLA/CFRA leave, employees who are employed for 30 consecutive days are eligible and there is no minimum hour requirement

Q: How much leave is provided to employees taking leave under this new law?

A: 12 weeks of leave.

Q: Is it a paid leave?

A: The first 10 days are unpaid but employees can use CV19 Sick Leave during those first 10 days or accrued PTO/vacation.

Q: How much does an employee earn while taking this leave?

A: After the first 10 days, the employee is paid $\frac{2}{3}$ of salary/normal wage rate up to \$200 a day. The employee can also exhaust his/her Coronavirus Response Act sick leave, vacation leave, or paid time off.

Caution: An employer cannot require an employee to first exhaust sick leave, vacation leave or PTO while using this leave.

Q: How can employers afford to pay their employees while taking sick leave or FMLA under the Coronavirus Response Act?

A: Through tax credits:

- Employers will receive \$511 per day in tax credits for an employee's own sickness or self-isolation.
- Up to \$200 per day in tax credits when employees have taken time off work to care for a child after a school/daycare closure or to care for an ill family member.

Q: What if an employer fails to provide sick leave or FMLA under the Coronavirus Response Act?

A: Denying an employee sick leave or FMLA under the Act is a violation of the Fair Labor Standards Act (FLSA) and willful discrimination against or retaliation against an employee for taking CV19 Sick Leave or FMLA is a violation of the FLSA. The employer will then face severe penalties.

Q: What penalties do employers face who fail to provide sick leave or FMLA under the Coronavirus Response Act?

A: Improperly denying an employee sick leave or FMLA or willfully discriminating against an employee who takes sick leave or FMLA under the Act will result in the following:

- Penalties for lost wages
- An equal amount in liquidated damages (essentially doubles the employee's lost wages)
- Attorneys' fees
- Costs

Q: How does an employer with 1-49 employees qualify for the hardship exemption?

A: Small employers with 1-49 employees may be exempted from providing sick leave **but only for** employees who intend to use it to care for a child if the school or place of care has been closed, or the child care provider is unavailable, due to CV19 precautions and the viability of their business is threatened.

Note: The exact rules for this exemption have not been released. Until then, employers should document why they feel they are exempt, including the specific details on how the viability of their business is threatened.

Sick Leave

Employers must provide employees with 80 hours of sick leave (can be prorated for part-time employees) to use for COVID-19 reasons.

Q: When does it go into effect?

A: The new law takes effect on April 1st

Q: If an employer already provides sick leave to its employees, do they just provide the difference between the sick leave already provided and the two weeks mandated by this new law?

A: The Act provides sick leave in addition to California's required sick leave allotment.

- Employers who already provide paid leave to employees on the day before the bill is enacted must provide this paid leave in addition to any paid leave already provided—and may not change their paid leave policies on or after the date of enactment to avoid compliance.

Q: If an employee already has sick leave on the books, do they need to exhaust that first?

A: No. Employers cannot require employees to use CA sick leave first.

Q: Which employers have to provide sick leave?

A: All employers must provide the new sick leave to their employees. Employers with 50 to 500 employees must provide CV19 Sick Leave. Employers with 1-49 employees may be able to qualify for a hardship exemption, but only in very limited circumstances.

Q: How does an employer with 1-49 employees qualify for the hardship exemption?

A: Small employers with 1-49 employees may be exempted from providing sick leave **but only for** employees who intend to use it to care for a child if the school or place of care has been closed, or the child care provider is unavailable, due to CV19 precautions and the viability of their business is threatened.

Note: The exact rules for this exemption have not been released. Until then, employers should document why they feel they are exempt, including the specific details on how the viability of their business is threatened.

Q: Does an employer have to pay its employees their normal wages while they are on sick leave under this new law?

A: Yes, however, with limitation: Wages paid are up to \$511 a day for an employee's own illness and $\frac{2}{3}$ of salary/normal wage rate up to \$200 a day if the employee is caring for a family member or if the leave is taken due to school and/or childcare closings.

Q: Can an employee make up the difference between their normal wage and their sick leave wage with accrued PTO or vacation?

A: Yes.

Q: What is the government doing to help offset the costs to employers that are being forced to provide this new sick leave?

A: Employers will be given Sick Leave Credit for Social Security taxes to offset costs.

- Tax Credits: Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage. For more information, please see the [Department of the Treasury's website](#).

Q: How does an employee qualify for sick leave under the new law?

A: An employee must meet one of 6 criteria to use CV19 Sick Leave:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to CV19;
2. The employee is advised by health care provider to self-quarantine due to CV19 concerns;
3. The employee experiencing symptoms of CV19 and seeking medical diagnosis;
4. The employee is caring for individual subject to quarantine order or advised by health care provider to self-quarantine;
5. The employee is caring for child if the school or place of care has been closed, or the child care provider is unavailable, due to CV19 precautions, or;
6. The employee 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.

Q: 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

A: 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. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.