



THANK YOU FOR JOINING US

This webinar will start
shortly

www.xperthr.com





FFCRA Developments and Child Care Leave Requests: What HR Needs to Know

October 7, 2020

Melissa Silver, XpertHR Legal Editor
Samantha Dawber, XpertHR Customer Success Specialist



XpertHR

AGENDA

- 1 — Overview of FFCRA
- 2 — Court Ruling on the FFCRA
- 3 — DOL Revised Rules and Guidance
- 4 — Child Care Leave Issues
- 5 — Action Steps
- 6 — How XpertHR Can Help



Families First Coronavirus Response Act

- Signed into law on March 18, 2020 and became effective April 1, 2020.
- The law expires on December 31, 2020.
- The law does not apply retroactively.
- Provides for paid sick leave.
- Expands the Family and Medical Leave Act.
- Both provisions apply to employers with fewer than 500 employees.



Eligible Employees

Length of Employment

- For emergency paid sick leave (EPSL), all employees regardless of length of employment are eligible.
- For expanded family and medical leave (EFMLEA), employees must be employed at least 30 days.

Exemptions

- Small businesses-fewer than 50 employees
- Health care providers*
- Emergency responders

Qualifying Reasons for Leave

- Quarantine or isolation order (EPSL)
- Recommendation for self-quarantine (EPSL)
- Seeking medical diagnosis and experiencing COVID-19 symptoms (EPSL)
- Care for an individual who is quarantining or self-isolating (EPSL)
- Childcare (EPSL and EFMLEA)
- Other “substantially similar condition” (EPSL)

Pay Obligations

Qualifying Reason	Employer Must Pay
Quarantine or isolation order	Regular rate of pay up to \$511/day (10 days)- \$5,110 total
Recommended to self-isolate	Regular rate of pay up to \$511/day (10 days)- \$5,110 total
Experiencing COVID-19 symptoms and seeking medical diagnosis	Regular rate of pay up to \$511/day (10 days)- \$5,110 total
Caring for an individual who is quarantining or self-isolating	2/3 regular rate of pay up to \$200/day (10 days)- \$2,000 total
School or place of care is closed or whose care provider is unavailable*	2/3 regular rate of pay up to \$200/day (10 days)- for paid sick leave- \$2,000 total
	2/3 regular rate of pay up to \$200/day (10 weeks)-for paid family and medical leave- \$10,000 total
Experiencing any other substantially similar condition	2/3 regular rate of pay up to \$200/day (10 days)- \$2,000 total

*An employee who is eligible for both emergency paid sick leave and expanded family and medical leave is entitled to receive a total of \$12,000.

Tax Credit

- 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.



New York District Court Decision

In August, a New York federal district court ruling struck down the following portions of the regulations implementing the FFCRA:

- The work-availability requirement;
- The definition of health care provider;
- Restrictions on intermittent leave; and
- Employee documentation requirements.



DOL Response

- The DOL has narrowed the definition of **health care provider** to now cover:
- Employees who are health care providers under the Family and Medical Leave Act; and
- Employees who provide diagnostic, treatment or preventive services, or other services that are integrated with and necessary to the provision of patient care are also included.
- An employee is **not a health care provider** merely because their employer provides health care services or because they provide a service that affects the provision of health care services.
- **Examples:** IT professionals, building maintenance staff, HR personnel, cooks, food services workers, records managers, consultants, and billers.

DOL Response

Revised Documentation Requirements

- An employee must provide the employer with documentation containing the following information ***as soon as practicable***:
 - The employee's name;
 - The date(s) for which leave is requested;
 - The qualifying reason for the leave; and
 - An oral or written statement that the employee is unable to work due to a qualifying reason.
- Previously, employees needed to provide this information **prior to** taking leave.



DOL Response

Clarified Notice Requirements

Paid sick leave notice: May not be required in advance and may only be required after the first workday (or portion of a workday) an employee takes emergency paid sick leave.

Expanded family and medical leave: Notice for taking EFML must be provided by the employee as soon as practicable.

If the need for EFML is foreseeable, it will generally be practicable for an employee to provide the employer with notice prior to the need to take leave.

DOL Response

Intermittent Leave and Work Availability



DOL reaffirmed:

- The requirement that an employee must obtain employer approval to take FFCRA leave intermittently.
- The work availability requirement, but revised rules and applied to all six qualifying reasons under EPSLA.

School Closures and Unavailability of Child Care

Employees who have not already exhausted paid leave available under the FFCRA may be entitled to take their remaining leave if their child's school or place of care is closed if:

- There is no other suitable caregiver available; and
- The employee would be able to perform work for the employer, either at the employee's normal workplace or remotely, but for the need to care for their child.



DOL Guidance on FFCRA



DOL FAQs explain an employee's eligibility for paid leave as schools announced their plan to reopen, including blending in-person with remote learning:

- **Hybrid:** paid leave available under the FFCRA on days when child is not permitted to attend school in person.
- **Choosing remote learning:** paid leave not available.
- **School is closed; remote learning:** employee eligible for paid leave while the school remains closed.

Documentation Required

- The name of the child being cared for;
- The name of the school, place of care or child care provider that has closed or is unavailable; and
- A representation that no other suitable person will be caring for the child during the leave period.



Intermittent Leave

- The DOL encourages employers and employees to collaborate to achieve maximum flexibility.
- Employer approval is required.
- DOL revised rules distinguishes intermittent leave requests when a school has a hybrid schedule versus in-person instruction.

Medical Diagnosis or Quarantine

- Fearful that child will be exposed to COVID-19 – no FFCRA entitlement
- Parent may be entitled to EPSL to take care of their child who is recovering from COVID or quarantining or self-isolating due to exposure.
- Parents may be entitled to EPSL if they need to quarantine or self-isolate due to exposure.
- Parent may be entitled to FMLA to care for a family member with a serious health condition.



Review State or Local Laws

- Employees may be entitled to job-protected leave under a state or local law (permanent or temporary).
- Many of the laws provide for care for a child if their school or place of care is closed.
- Several of them fill a gap left by the FFCRA and apply to employers with 500 or more employees. These include Colorado, New Jersey and the District of Columbia as well as a number of localities in California.

Employer-Provided Paid Time Off

- An employee may be permitted to use accrued employer-provided paid time off for an absence related to a school or child's place of care closure after the expiration of EPSL.
- Employer-provided paid time off may be applied concurrently with leave under the EFMLEA.
- An employee who is not entitled to or has exhausted their FFCRA leave may be entitled to use accrued paid time off during an absence due to the closure of a school or child's place of care under an employer plan or policy.



Remote Work

Under the FFCRA employees are able to telework if:

- Their employer has work for them;
- The employer permits the employee to work from the employee's location; and
- There are no extenuating circumstances (such as serious COVID-19 symptoms) that prevent the employee from performing that work.

DOL guidance encourages employers and employees to collaborate to meet mutual needs.



Flexible Scheduling

An employer may by its own choice provide a flexible work arrangement, such as

- Working outside normal work hours
- A schedule with changing start and end times
- A compressed schedule (e.g., a four-day workweek)
- Job sharing
- Swapping shifts

Be mindful of advance-notice scheduling requirements that may apply under state and local predictable scheduling laws (e.g., the San Francisco's Family Friendly Workplace Ordinance).

Company Benefits

- Back up child care
- Tutoring services
- Virtual after school programs
- Stipends or reimbursement for child care
- Additional paid leave
- Learning pods
- Webinars for parents and caregivers about stress management



Action Items

- Update any policies, documents or handbook statements regarding employee notice and documentation requirements
- Train supervisory and managerial employees, as well as HR on FFCRA documentation requirements
- Ensure certain professions are not excluded from FFCRA eligibility as health care providers under revised definition
- Be prepared for child care leave requests under the FFCRA
- Collaborate with workers to achieve flexibility and to meet mutual needs
- Avoid discrimination against workers with caregiving responsibilities and caregiver stereotypes
- Manage flexible work arrangements
- Monitor leave requirements on the federal, state and local level

How XpertHR Can Help

- [Families First Coronavirus Response Act \(FFCRA\): COVID-19 Paid Sick Leave and Expanded Family and Medical Leave Requirements](#)
- [Request for Leave Under the Families First Coronavirus Response Act \(FFCRA\) Form](#)
- [Approval of Leave Request Under the Families First Coronavirus Response Act \(FFCRA\) Letter](#)
- [Denial of Leave Request Under the Families First Coronavirus Response Act \(FFCRA\) Letter](#)
- [Coronavirus \(COVID-19\): Temporary Handbook Statements](#)
- [Coronavirus \(COVID-19\): Back-to-School Challenges](#)
- [Coronavirus \(COVID-19\): State and Local Leave Laws](#)
- [Flexible Working](#)
- [Coronavirus \(COVID-19\): Remote Work](#)
- [Scheduling Laws by State and Municipality](#)
- [Coronavirus \(COVID-19\): Benefits](#)

Thank you

Melissa Silver
XpertHR Legal Editor

Samantha Dawber
XpertHR Customer Success Specialist