



# FFCRA Overview

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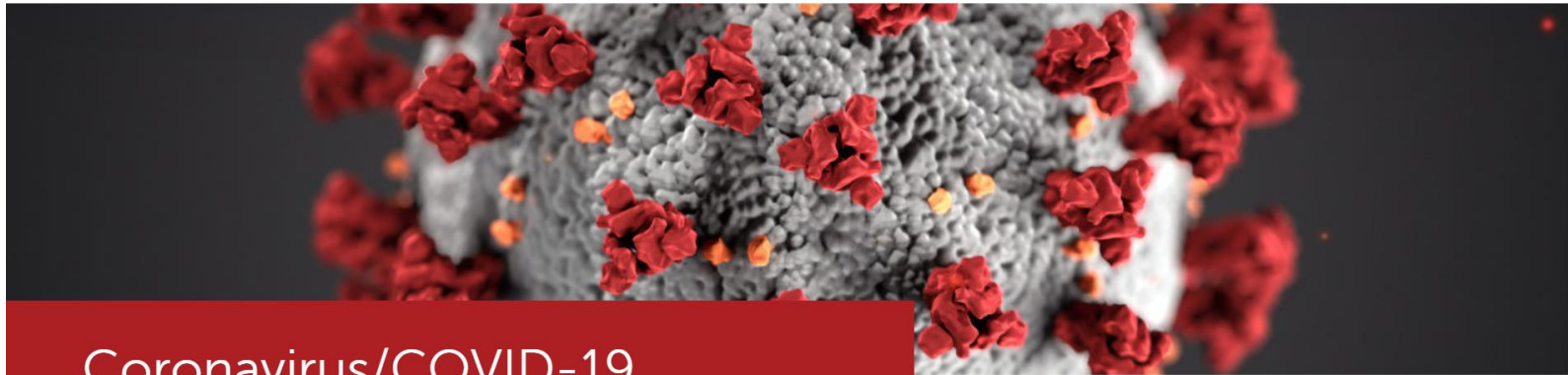
# Scott COVID – 19 Resource Page

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# Agenda

- **Actions for Best-In-Class Employers**
- FFCRA Overview
- COVID – 19 Testing
- Paid Sick Leave Requirements
- Expanded FMLA Requirements
- Tax Credits in the FFCRA
- Other Provisions
- FFCRA FAQ



# Actions by Best-in-Class ER's

- Build trust/confidence that you care about employees' well-being, safety, and finances.
- Encourage remote/telework and issue remote work policies with EE guidance. Leverage technology and **develop a virtual culture!**
- Establish an emergency response team to lead your strategy
- Provide immediate assistance through EAP, Virtual Health, and Benefits Continuation
- Securing facility access (no vendors, calling customers early, wristbands, etc.)
- Ensure safety through easily accessible hygiene gear, onsite temp checks, PPE, HR COVID-19 "log"
- Commercial Cleaning Services (hydrogen peroxide mister)
- Minimize workforce reduction through staggered shifts, remote weeks, PPP loans, **alternate work**, etc.
- Flexibility in attendance policies and leave requirements – **especially for high-risk employees**

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# FFCRA Overview



# FFCRA Overview

- Phase 1
  - \$8.3 Billion
  - CDC, vaccine development, other public health measures
- Phase 2
  - Families First Coronavirus Response Act (FFCRA)
    - COVID – 19 Testing Requirements
    - Paid Sick Leave
    - Expanded FMLA
    - Tax Credits
    - Funding for federal programs and unemployment compensation
- Phase 3
  - Coronavirus Aid, Relief, and Economic Security Act (CARES)
    - Direct cash payments to Americans
    - Forgivable loans to small businesses to cover payroll, rent, etc.
    - Relief for companies in hard hit sectors of the economy
    - Expanded unemployment insurance with waivers of ordinary requirements
    - Funding hospitals and health care providers



# FFCRA Overview

- Passed the House by Unanimous Consent with Technical Corrections on March 14
- Passed by the Senate and signed into law on March 18
- Contains several provisions to provide relief for effects of coronavirus pandemic
- Includes:
  - Coverage for COVID-19 testing
  - Funding for federal programs and unemployment compensation
  - Emergency paid sick leave
  - Expanded FMLA rights
  - Tax credits for employers that provide required leave (including self-employed individuals)



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# COVID – 19 Testing



# COVID-19 Testing

- Group health plans and health insurance issuers must cover COVID-19 testing:
  - Plans must provide coverage for COVID-19 diagnostic testing, including the cost of a provider, urgent care center and emergency room visits in order to receive testing (including telehealth).
  - The IRS advised that HDHP plans can cover testing and treatment for COVID – 19 without jeopardizing their status
  - At this point no mention of “treatment” in non HDHP plans, however most carriers are covering with no cost share
- Plans and issuers may not impose:
  - Cost sharing (such as deductibles, copayments or coinsurance)
  - Prior authorization or other medical management requirements
- Applies to all group and individual plans or policies

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# Emergency Paid Sick Leave



# Emergency Paid Sick Leave

- The Act requires two weeks (80 hours) of paid sick leave for full time government workers and employees of companies with fewer than 500 employees.
- Part time employees must be given the number of hours that they work on average in a two-week period.
- Leave must be made available immediately to workers who are unable to work (or telework) due to a need for leave for a number of reasons.
- Sick pay does NOT carry over from one year to the next
- No minimum length of employment requirement



# Emergency Paid Sick Leave

- On March 24th DOL advised that the FFCRA's paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020; they also advise it is not retroactive.
- The DOL will issue a 30-day non-enforcement period for employers acting "reasonably and in good faith".



# Definitions

- **Covered employer:** government agency of any size or person engaged in/affecting commerce who employs fewer than 500 employees
  - The DOL provided guidance on the counting methodology in a Q&A on March 24, which can be found in appendix
- **Employee:** government employee or as defined by FLSA
  - Regardless of length of employment (different than Expanded FMLA)
- **Exemptions:**
  - Regulations may exempt medical providers, emergency responders and small businesses with fewer than 50 EE's (childcare only)
  - Employers can choose to exempt medical provider and emergency responder employees



# Reasons for Paid Sick Leave (1-3)

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.



# Reasons for Paid Sick Leave (4-6)

4. The employee is caring for an individual who is subject to an order as described in (1) or has been advised as described in (2).
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
6. The employee is 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.





# Required Compensation

- Based on regular rate of pay, federal minimum wage or state/local minimum wage (whichever is higher)
  - 100% of pay if employee is experiencing reasons 1, 2, or 3 (up to \$511/day and \$5,110 aggregate)
  - 2/3 of pay if employee is experiencing 4, 5, or 6 (up to \$200/day and \$2,000 aggregate)
- Compensation should be based on the employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e))
- For part time employees a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type.



# Other Paid Sick Leave Rules

- Employer may not:
  - Require EE to search for/find a replacement EE for leave period
  - Require EE to use other paid leave first
  - Retaliate against EE for using leave
- Employer may:
  - Require EE to follow reasonable notice procedures after first day of leave



# Other Paid Sick Leave Rules

- Employer must post and keep posted a notice of the paid sick leave requirements
  - In conspicuous places on the premises of the employer where notices to employees are customarily posted
  - **DOL has issued a model notice**
- Special rules apply to collectively bargained employees
- Unused paid sick leave does not have to be paid out at termination
- Expires 12/31/20

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# Expanded FMLA Requirements



# Expanded FMLA

- The Act provides FMLA rights for some employees of companies with fewer than 500 employees, requiring partially paid leave after 10 days when an employee who has worked at least 30 calendar days for the employer and is unable to work or telework due to school or child care closures related to the coronavirus.
- This benefit would be paid for 10 weeks following the first 2 unpaid weeks, (which would be typically paid under the Paid Sick Leave provision described previously) for a total of 12 weeks of leave.
- Effective Date same as ESL – 4/1/2020



# Expanded FMLA - Paid Leave

- The first 10 days of expanded FMLA leave may be unpaid
  - An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave
  - While the laws states the above the paid sick leave provision should cover these 10 days in most instances
- Paid leave must be provided after 10 days
  - At least 2/3 of the employee's regular rate based on normally scheduled hours
  - Pay capped at \$200/day and \$10,000 overall



# Expanded FMLA

- On March 24th DOL advised that the FFCRA's paid leave provisions are effective on April 1, 2020, and apply to leave taken between **April 1, 2020, and December 31, 2020**; they also advise it is not retroactive.
- The DOL will issue a 30-day non-enforcement period for employers acting "reasonably and in good faith".



# Expanded FMLA - Definitions

- **Eligible employee:** an employee who has been employed for 30+ calendar days
- **Covered employer:** person engaged in/affecting commerce who employs fewer than 500 employees
  - The DOL provided guidance on the counting methodology in a Q&A on March 24, which can be found in the appendix
- **Exemptions:**
  - Regulations may exempt medical providers, emergency responders and small businesses with fewer than 50 EEs
  - Employers can choose to exempt medical provider and emergency responder employees





# Expanded FMLA - Definitions

- **Qualifying need related to a public health emergency:** employee is unable to work (or telework) due to a need to care for his or her minor child if the school or child care provider is unavailable due to a public health emergency
- **Public health emergency:** an emergency with respect to COVID–19 declared by a Federal, State, or local authority

# Expanded FMLA – Other Provisions



- Employee must provide notice of leave “as is practicable”
- FMLA restoration rights do not apply to employers with fewer than 25 employees if conditions are met
- Special rules for collectively bargained employees

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# Tax Credits in the FFCRA



# Tax Credits in the FFCRA

- Credit against payroll taxes for each calendar quarter in an amount equal to 100% of the “qualified sick leave wages” or “qualified family leave wages” paid by the employer during the calendar quarter
- If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS.
- The IRS expects to process these requests in two weeks or less. The details of this new, expedited procedure will be announced next week.



# Tax Credits in the FFCRA

- Employers can reduce form 941 payroll tax deposit based on paid sick leave / expanded FMLA to immediately access funds
- Can claim the credit on 941 quarterly filing
- Credits are also available to self-employed individuals

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# Tax Credits for Paid Sick Leave

- For an employee who is unable to work because of Coronavirus quarantine or self-quarantine or has Coronavirus symptoms and is seeking a medical diagnosis, eligible employers may receive a refundable sick leave credit for sick leave at the employee's regular rate of pay, up to \$511 per day and \$5,110 in the aggregate, for a total of 10 days.
- For an employee who is caring for someone with Coronavirus, or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to the Coronavirus, eligible employers may claim a credit for two-thirds of the employee's regular rate of pay, up to \$200 per day and \$2,000 in the aggregate, for up to 10 days



# Tax Credits for Expanded FMLA

- In addition to the sick leave credit, for an employee who is unable to work because of a need to care for a child whose school or child care facility is closed or whose child care provider is unavailable due to the Coronavirus, eligible employers may receive a refundable child care leave credit.
- This credit is equal to two-thirds of the employee's regular pay, capped at \$200 per day or \$10,000 in the aggregate. Up to 10 weeks of qualifying leave can be counted towards the child care leave credit.

# Tax Credits for Health Insurance Coverage



- Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period
- This additional credit can be applied to both the paid sick leave and the expanded FMLA leave





# Tax Credit 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.

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# Other Provisions



# Unemployment Compensation

- The Act provides federal funds to help states pay for increased UI claims caused by the outbreak
- The Act encourages states to waive limitations on UI benefits for COVID-19-related claims.
- Other DOL guidance says states may allow UI benefits in non-standard situations
- \$500 million to provide immediate funding to states
- \$500 million reserved for emergency grants for states which have a 10% increase



# Nutrition and Health

- \$500 million for WIC recipients who are laid off or lose their jobs
- \$400 million to assist local food banks
- Emergency SNAP assistance to children who rely on school lunches
- \$100 million for assistance to US Territories for nutrition assistance
- \$250 million for Senior Nutrition Program

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# FFCRA FAQ



# FFCRA FAQ

Q – Where can I access the guidance provided by the DOL?

Answer:

Families First Response Act: Questions and Answers:

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

Fact Sheet for Employers:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

Fact Sheet for Employees:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>



# Other Considerations

**Q- Can you ask an employee to leave work (or stay home) if they show symptoms of COVID -19**

**A- Yes, the CDC says that those who show symptoms during a pandemic should leave the workplace.**



# Other Considerations

**Q- Can you take employees temperatures at work to determine if they might be infected?**

A- Yes, the EEOC has advised that taking an employees temperature is permissible under the current circumstances. There are special requirements to do this in some states. As a practical matter those taking the temperature should wear PPE, see OSHA for guidelines.





# Other Considerations

**Q- What should I do if an employee gets a positive test for COVID -19**

A- Send everyone who has worked closely with that employee home for a 14-day period to ensure the infection doesn't spread. Do not identify the employee by name. Consider a deep cleaning of the work area.



# Other Considerations

**Q- Can I continue to offer my employees their benefits if they aren't working due to lay-off or furlough?**

A- It depends...many carriers are temporarily modifying their actively at work requirements or definition of "active employees" due to the current circumstances. Check with your carrier to determine their current policy and check the Workforce Reduction section of the Scott Website for more information on the topic.



# FFCRA FAQ

**Q- Can we require that employees first use PTO or other accrued leave before taking the leave required in the FFCRA?**

**A- No, the law specifically prevents employers from requiring this, but employees may choose to apply other accrued leave first if they would like.**



# FFCRA FAQ

**Q- Does our Short Term Disability (STD) insurance policy pay for the two weeks of Emergency Paid Sick Leave, or must we pay it via payroll?**

A- In most cases, you will need to pay it via payroll. The law specifies that employers may recoup the leave cost via tax credits, so the intent seems to be that employers pay employees via payroll during the required leave.



# FFCRA FAQ

**Q- What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?**

**A -You must provide to your employer documentation in support of your paid sick leave as specified in applicable IRS forms, instructions, and information. (Add'l documentation can be required for reason #5)**

Please also note that all existing certification requirements under the FMLA remain in effect if you are taking leave for one of the existing qualifying reasons under the FMLA.

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# FFCRA FAQ

**Q -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?**

A - An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt ...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:

- The provisions 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 or employees would result in a risk to financial health
- There are not sufficient workers to perform the labor



# FFCRA FAQ

**Q - May I take my paid sick leave or expanded family and medical leave intermittently while teleworking?**

**A - Yes, if your employer allows it and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act.**



# FFCRA FAQ

**Q - May I take my paid sick leave intermittently while working at my usual worksite (as opposed to teleworking)?**

A- It depends on why you are taking paid sick leave and whether your employer agrees. Unless you are teleworking, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments.





# FFCRA FAQ

**Q May I take my expanded family and medical leave intermittently while my child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, if I am not teleworking?**

**A -Yes, but only with your employer's permission.**

The Department encourages employers and employees to collaborate to achieve flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the Department supports such voluntary arrangements.



# FFCRA FAQ

**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.

See questions #23 - #28 in DOL Q & A for variations of this question.



# FFCRA FAQ

**Q - 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?**

**A -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.

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# FFCRA FAQ

**Q -As an employee, may I use my employer's preexisting leave entitlements and my FFCRA paid sick leave and expanded family and medical leave concurrently for the same hours?**

**A- No.** If you are eligible to take paid sick leave or expanded family and medical leave under the FFCRA, as well as paid leave that is already provided by your employer, unless your employer agrees you must choose one type of leave to take.

For example, if you are receiving 2/3 of your normal earnings from paid sick leave or expanded family and medical leave under the FFCRA and your employer permits, you may use your preexisting employer-provided paid leave to get the additional 1/3 of your normal earnings so that you receive your full normal earnings for each hour.



# FFCRA FAQ

**Q - Who is a “health care provider” who may be excluded by their employer from paid sick leave and/or expanded family and medical leave?**

A - For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider is defined in the guidance at anyone employed at a variety of different medical facilities.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.



# FFCRA FAQ

**Q -Does a shelter at home order qualify as a leave condition for EPSL and EFML?**

**A-** Neither the law nor the guidance makes this crystal clear. There are legal opinions on both sides. Some interpret question #27 in the DOL FAQs to say that it would qualify. If considering this for your employer we suggest seeking council.



# 500 Employee Calculation

**As an employer, how do I know if my business is under the 500-employee threshold and therefore must provide paid sick leave or expanded family and medical leave?**

You have fewer than 500 employees if, at the time your employee's leave is to be taken, you employ fewer than 500 full-time and part-time employees within the United States, which includes any State of the United States, the District of Columbia, or any Territory or possession of the United States. In making this determination, you should include employees on leave; temporary employees who are jointly employed by you and another employer (regardless of whether the [jointly-employed employees](#) are maintained on only your or another employer's payroll); and day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship). Workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than [employees](#), are not considered employees for purposes of the 500-employee threshold.

Typically, a corporation (including its separate establishments or divisions) is considered to be a single employer and its employees must each be counted towards the 500-employee threshold. Where a corporation has an ownership interest in another corporation, the two corporations are separate employers unless they are [joint employers under the FLSA](#) with respect to certain employees. If two entities are found to be joint employers, all of their common employees must be counted in determining whether paid sick leave must be provided under the Emergency Paid Sick Leave Act and expanded family and medical leave must be provided under the Emergency Family and Medical Leave Expansion Act.

In general, two or more entities are separate employers unless they meet the [integrated employer test](#) under the Family and Medical Leave Act of 1993 (FMLA). If two entities are an integrated employer under the FMLA, then employees of all entities making up the integrated employer will be counted in determining employer coverage for purposes of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act.

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# Unemployment Details

- **Pandemic Unemployment Assistance** - creates a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency.
- **Emergency Increase in Unemployment Compensation Benefits** - provides an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.
- **Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week** - provides funding to pay the cost of the first week of unemployment benefits through December 31, 2020 for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.





# Unemployment Details

- **Pandemic Emergency Unemployment Compensation** - provides an additional 13 weeks of unemployment benefits through December 31, 2020 to help those who remain unemployed after weeks of state unemployment benefits are no longer available.
- **Temporary Financing of Short-Time Compensation Payments in States with Programs in Law** - provides funding to support “short-time compensation” programs, where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit. This provision would pay 100 percent of the costs they incur in providing this short-time compensation through December 31, 2020.



# Tax Details

- **Delay of payment of employer payroll taxes**  
The provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees.
- Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The Social Security Trust Funds will be held harmless under this provision.



# Thank You!

- Please contact a Scott Advisor as a resource for any challenges that you encounter during this time, whether benefits related or not.
- Our COVID - 19 Task Force is here to help, send all questions through your Scott Advisor.
- If your employees are facing COVID – 19 related challenges you can direct them to [www.findhelp.org](http://www.findhelp.org) for help with paying bills and other free or reduced cost programs to help individuals impacted by COVID – 19.