

Post COVID-19 Return to Work OSHA Guidance: Considerations for Employers



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Phased Reopening-Phase 1

- Make telework available when possible and feasible.
- Limit number of employees in the workplace.
- Close common areas where personnel are likely to congregate and interact.
- Enforce strict social distancing protocol.
- Limit non-essential business travel.
- Consider accommodations for workers for higher risk of illness.
 - Elderly
 - Serious underlying health condition

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Phase 2

- Continue to encourage remote work and telework whenever possible and feasible with business operations
- Non-essential business travel can resume.
- Continue to close common areas where personnel are likely to congregate and interact.
- Enforce moderate to strict social distancing.
- Continue to accommodate vulnerable workers.

Phase 3

- For States and regions that have no evidence of a rebound of COVID-19 cases, and satisfy the gating criteria a third time.
- Guidance is simple:
 - Employers can resume **unrestricted staffing** of worksites!



Employer Reopening Plans

- Recommended for all phases.
- Develop and implement policies and procedures that address:
 - Preventing;
 - Monitoring; and
 - Responding to emergence or resurgence of COVID-19 in workplace or community.
- Should address various categories.

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Employer Reopening Plan-Categories

- Hazard Assessment
- Basic Hygiene
- Social Distancing
- Identification and Isolation of Sick Employees
- Return to Work After Illness/Exposure
- Controls
- Workplace Flexibility
- COVID-19 Prevention Training
- Anti-Retaliation

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Face Coverings In The Workplace

- Cloth Face Coverings/Masks are Not PPE.
- Not required to provide to your employees.
- Surgical masks are also not PPE outside of healthcare and first-responder workplaces.
- Cloth masks cannot be used in place of N95s or other respirators.
- OSHA could still cite employer for failing to provide masks, conduct PPE assessment, and/or train employees on mask care.
- Many states requires cloth masks in the workplace.

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Relevant OSHA Standards for Reopening

- PPE
- Respiratory Protection
- Sanitation
- Bloodborne Pathogens Standard
- Infectious Disease Response Plan
- Recordkeeping
- Reporting
- General Duty Clause


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Final Questions?




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The New Normal? Post-Pandemic Planning and Return to Work Considerations in the Age of COVID-19

Garden State Bar Association – Labor & Employment Section

Families First Coronavirus Response Act Overview

June 25, 2020

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Overview

- Federal Law:
 - Families First Coronavirus Response Act (FFCRA)
 - Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA)



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Families First Coronavirus Response Act (FFCRA)

- Families First Coronavirus Response Act (H.R. 6201)
 - Emergency Paid Sick Leave Act (EPSLA)
 - Emergency Family and Medical Leave Expansion Act (EFMLEA)
- Signed on **March 18, 2020**, the Act requires most private employers with fewer than 500 employees to provide two weeks of paid sick leave to workers impacted by COVID-19
- Effective Date **April 1, 2020**
- Provisions will apply from the effective date through **December 31, 2020**
- Businesses will be reimbursed the full amount of these benefits within three months in the form of a payroll tax credit (e.g., the employer's contribution to health insurance premiums during the leave)
- The Act eases access to unemployment benefits



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Families First Coronavirus Response Act (FFCRA)

- **Covered Employers:** certain public employers, and private employers with fewer than 500 employees
- State and local governments are "covered employers" regardless of the size of their workforce
- Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by the Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA
- Federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision

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



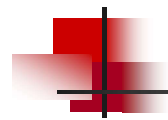
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Families First Coronavirus Response Act (FFCRA)

| Covered | Not Covered |
|------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| full-time employees | independent contractors |
| part-time employees | employees "who have been laid off or furloughed and have not subsequently been reemployed" |
| employees on leave | employees who are not employed within the United States |
| employees of temporary placement agencies who are jointly employed under the FLSA . . . by the Employer and another Employer | |
| day laborers supplied by a temporary placement agency | |
| 29 C.F.R. § 826.40(a)(1)(ii) | 29 C.F.R. § 826.40(a)(1)(iii) |



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Families First Coronavirus Response Act (FFCRA)

Generally, the FFCRA provides that covered employers must provide to **all employees**:

- *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay where:*
 - the employee is unable to work,
 - because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or
 - experiencing COVID-19 symptoms and seeking a medical diagnosis.

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



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Families First Coronavirus Response Act (FFCRA)

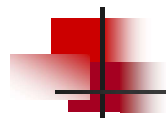
Generally, the Act provides that covered employers must provide to **all employees**:

- *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay where:*
 - the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider),
 - or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or
 - the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

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



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Families First Coronavirus Response Act (FFCRA)

- A covered employer must provide to **employees that it has employed for at least 30 days**:
 - *up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay* where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19
- **Small businesses** with fewer than 50 employees may qualify for exemption if the leave requirements would jeopardize the viability of the business as a going concern

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



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Families First Coronavirus Response Act (FFCRA)

Qualifying Reasons for Leave:

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) 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 in (1) or self-quarantine as described in (2);
- 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; or
- 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.

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



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Families First Coronavirus Response Act (FFCRA)

Calculation of Pay:

- **For leave reasons (1), (2), or (3):** employees taking leave shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, 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 or 2/3 the applicable minimum wage, whichever is higher, 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 or 2/3 the applicable minimum wage, whichever is higher, 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)

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



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Families First Coronavirus Response Act (FFCRA): Intermittent Leave

FFCRA Leave on an Intermittent Basis

Adopting and modifying the FMLA's rules as to intermittent leave, the DOL's temporary rule provides that intermittent FFCRA leave may be taken on the following conditions:

- The employer and the employee agreed to intermittent leave, as well as its conditions
- Employees who must or may telework are permitted to take leave intermittently during that time
- Employees reporting to a worksite may not take intermittent paid sick leave because the employee is subject to a governmental or medical quarantine order, symptomatic and seeking a medical diagnosis, caring for a quarantined individual, or experiencing a specified substantially similar condition
- Only the amount of leave that an employee takes counts toward his or her leave entitlement

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



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Families First Coronavirus Response Act (FFCRA)

- **Tax Credits:** Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA
- **Prohibitions:** Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA

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



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Families First Coronavirus Response Act (FFCRA)

FEDERAL REGISTER
The Daily Journal of the United States Government

Paid Leave Under the Families First Coronavirus Response Act

A Rule by the Wage and Hour Division on 04/06/2020

AGENCY:
Wage and Hour Division, Department of Labor

ACTION:
Temporary rule.

SUMMARY:
The Secretary of Labor ("Secretary") is promulgating temporary regulations to implement public health emergency leave under Title I of the Family and Medical Leave Act (FMLA), and emergency paid sick leave to assist working families facing public health emergencies arising out of Coronavirus Disease 2019 (COVID-19) global pandemic. The leave is intended for a time-limited duration.

Effective Date:
Immediate


Document Type:
Rule

Document Citation:
29 CFR 825.218

Source: <https://www.govinfo.gov/content/pkg/FR-2020-04-06/pdf/2020-07237.pdf>




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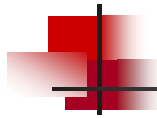
Families First Coronavirus Response Act (FFCRA)

Documenting Leave Requests

- Employees requesting FFCRA leave must provide their employers with documentation containing:
 - their name;
 - dates of the requested leave;
 - the reason for the leave; and
 - a statement that the qualifying reason for leave is preventing the employee from working or teleworking.




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Families First Coronavirus Response Act (FFCRA)

- USDOL issued Guidance 3/24/2020
- Fact Sheet for Employees – <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>
- Fact Sheet for Employers – <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>
- Questions and Answers - <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Source: <https://www.dol.gov/agencies/whd/ffcra>



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EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

▪ **PAID LEAVE ENTITLEMENTS**
Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 5 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #6 below for up to \$200 daily and \$12,000 total.


A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

▪ **ELIGIBLE EMPLOYEES**
In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #6 below.

▪ **QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19**
An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:


| | |
|-------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; | 5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or |
| 2. has been advised by a health care provider to self-quarantine related to COVID-19; | 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
| 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis; | |
| 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | |

▪ **ENFORCEMENT**
The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.




WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR


For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd



WH1422 DEVI 0308




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Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA)

- Enacted on **March 18, 2020** as part of the federal FFCRA
- Federal money to states to increase available funds for unemployment insurance claims
- Under EUISAA, a state must require employers to provide a "separated" employee with notification of the availability of unemployment benefits
- States must ease eligibility requirements and access to unemployment benefits for claimants



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Nothing in these materials should be relied upon as legal advice in any particular matter.



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Guidance and Relief for Retirement Plans Due to the Covid-19 Pandemic

Cassandra Labbees

June 25, 2020

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Retirement Plans

COVID Distributions/Hardship Withdrawals

- Section 2202(a) of the CARES Act allows for plans to provide for a new type of withdrawal (i.e., a COVID distribution) to “qualified individuals” between January 1, 2020 and December 31, 2020
 - Qualified individuals are plan participants who have tested positive for COVID, who have a spouse or dependent who tested positive for COVID, or who have experienced adverse financial consequences due to COVID because the participant is quarantined, furloughed, laid off, working a reduced schedule, or unable to work due to a lack of child care
- IRS Notice 2020-50: Expands the definition of who is considered a “qualified individual” to also include individuals who experience adverse financial consequences as a result of:
 - The individual experiencing a reduction in pay (or self-employment income) due to COVID-19 or having a job offer rescinded or start date for a job delayed due to COVID-19;
 - The individual’s spouse or member of the individual’s household being quarantined, being furloughed or laid off, or having hours reduced due to COVID-19
 - Closing or reducing hours of a business owned or operated by the individual’s spouse or a member of the individual’s household due to COVID-19

Retirement Plans

COVID Distributions/Hardship Withdrawals

- Notice 2020-50
 - Plan administrators may rely on the employee’s certification that the employee meets the conditions under the rules in determining whether the employee is a qualified individual, in the absence of actual knowledge to the contrary.
 - The CARES Act stated that the plan may rely on a participant’s attestation that the participant qualifies for a COVID distribution
 - Notice 2020-50 provides a model certification, which simply requires the individual to certify that he or she meets “at least one” of the listed qualifications.
- A COVID distribution is limited to aggregate amount of \$100,000 and waives the additional 10% tax on early withdrawals
- The distribution can be taxed as income spread evenly over three tax years
- A COVID distribution generally may be repaid to the plan within three years of the date of withdrawal
 - If a participant pays back the amount withdrawn in the three year period, he or she can claim a refund for those taxes

Retirement Plans

Plan Participant Loans

- Section 2202(b) of the CARES Act allows a plan to increase the maximum plan loan to the lesser of \$100,000 or 100% of the qualified individual's vested account balance
- Applies to loans made between March 27, 2020 through September 23, 2020
- Also any plan loan repayment of a qualified individual due on any outstanding loan between March 27, 2020 and December 31, 2020, may be delayed up to one year, with subsequent repayments will be adjusted to reflect the delay and interest accrued during the delay
 - The one-year delay is disregarded when determining the five-year maximum period and term of the loan

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Retirement Plans

Required Minimum Distributions

- Section 2203 of the CARES Act temporarily waives the requirements for "required minimum distributions"
- As of 2020, the age for withdrawing from retirement accounts changed to April 1 following the year the participant reaches age 72 (previously 70 ½) years of age
 - The waiver applies to defined contribution plans (e.g., 401(k) plans) and other types of plans
- This waiver applies to distributions that must be made in 2020 because the required beginning date occurs in 2020 and the distribution was not made prior to January 1, 2020
- IRS Notice 2020-51 provides rollover relief
 - Anyone who had already taken a required minimum distribution in 2020 now has the opportunity to roll those funds back into their plan account (other than a defined benefit plan)
 - The 60 day rollover period for any RMDs already taken this year has been extended to August 31
 - Notice includes two sample amendments that employers may adopt to give plan participants/beneficiaries whose RMDs are waived a choice as to whether or not to receive the RMD

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Retirement Plans

Delay of Deadlines

- Section 3607 of the CARES Act allows the DOL to delay filing and appeal deadlines under ERISA
- Form 5500s due on or after April 1, 2020 have been delayed until July 15, 2020 (IRS Notice 2020-23)
- EBSA Disaster Relief Notice 2020-01
 - Required notices may be delayed as long as the fiduciary acts in good faith and furnishes the communication as soon as administratively practicable
 - Relief provided to plan administrators for deadlines to furnish ERISA required statements, disclosures and notices beginning March 1, 2020 and ending 60 days after the announcement of the end of the COVID-19 national emergency
 - Reiterates Form 5500 relief provided in the IRS Notice 2020-23 and also provides Form M-1 filing relief
 - Filings due on or after April 1, 2020 and before July 14, 2020 delayed until July 15, 2020
 - Failure to follow procedural requirements for plan loans or distributions will not violate ERISA if: (1) the failure is solely attributable to the pandemic; (2) a good faith effort is made to comply with plan procedures; and (3) the plan administrator makes a reasonable attempt to correct any procedural deficiencies (ex: assemble missing documents) as soon as possible

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Retirement Plans

Funding Relief

- Generally, defined benefit plans are subject to annual funding requirements under the Code
- Section 3608 of the CARES Act allows single employer defined benefit plan sponsors to delay required minimum contributions otherwise due during the 2020 calendar year until January 1, 2021
 - Assist companies struggling short-term with cash-flow
 - Delayed contributions must be paid with interest
- The CARES Act also allows defined benefit plan sponsors to rely on the 2019 funding percentage in 2020 for purposes of determining certain restrictions on benefits under the plan
- HEROES Act passed in the House but unlikely to advance in the Senate
 - Included several relief provisions for multiemployer plans including:
 - Creation of temporary partition program under which certain distressed multiemployer plans can receive financial assistance from the PBGC while the remaining part of the plan remains solvent
 - Repeal of the benefit suspension program under the Multiemployer Pension Reform Act
 - Increase in PBGC guaranteed benefit for plans receiving PBGC assistance since December 16, 201

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Retirement Plans

Other Considerations

- Suspension or Reduction of Employer Contribution Obligations
 - Generally prospective changes to plans are permissible
 - Safe harbor 401k plan considerations
- Partial Plan Terminations
 - Generally occurs when 20% or more participants separate from service through employer-initiated terminations (i.e., layoffs, severance or terminations)
 - Usually determined over a plan year but could be cumulative if terminations occurred over several years
 - IRS requires that all participants terminated in that year (including those who voluntarily terminated during the applicable period) become 100% vested in matching and other employer contributions that are subject to a vesting schedule
- Multiemployer Pension Plan Withdrawal Liability
 - Layoffs may trigger withdrawal liability if an employer who contributions to the plan incurs a complete withdrawal or partial withdrawal

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Future Litigation: COVID-19 Related Lawsuits by Employees

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Families First Coronavirus Response Act

- FFCRA 29 U.S.C.A. § 2620
- The law is part of the Family and Medical Leave Act (“FMLA”) 29 U.S.C.A § 2611, et seq.
- Same damages as available under FMLA, economic, liquidated (double economic damages) - 29 U.S.C. § 2617(a)(1)(A)(iii), fee shifting
- No emotional distress or punitive damages, *Keene v. Rinaldi*, 127 F. Supp. 2d 770, 772 (M.D.N.C. 2000)
- Statute of Limitations – 2 years . . . However
- Law is effective from April 2, 2020 through December 31, 2020 [when is actual SOL?]

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Families First Coronavirus Response Act

- Additional Protections to FMLA:
 - Covers More Employees: “eligible employee” means an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested under section 102(a)(1)(F).
 - includes an employee who was laid off by that employer not earlier than March 1, 2020, had worked for the employer for not less than 30 of the last 60 calendar days prior to the employee's layoff, and was rehired by the employer.
 - Covers more Employers: Section 2611(4)(A)(i) of this title shall be applied by substituting “fewer than 500 employees” for “50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year”.

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Families First Coronavirus Response Act

29 U.S.C.A. § 2611 (West)

(11) Serious health condition

The term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves--

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment by a health care provider.

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Families First Coronavirus Response Act

- Additional Protections to FMLA (con’t):
 - Covers More “Emergencies”: The term “qualifying need related to a public health emergency”, with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.
 - Additional Exemptions: The Secretary of Labor shall have the authority to issue regulations for good cause under sections 553(b)(B) and 553(d)(3) of Title 5--
 - (A) to exclude certain health care providers and emergency responders from the definition of eligible employee under subsection (a)(1)(A);
 - (B) to exempt small businesses with fewer than 50 employees from the requirements of section 2612(a)(1)(F) of this title when the imposition of such requirements would jeopardize the viability of the business as a going concern; and

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Families First Coronavirus Response Act

- Paid vs Unpaid Leave:

- The first 10 days for which an employee takes leave under section 2612(a)(1)(F) of this title may consist of unpaid leave.
- An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave under section 2612(a)(1)(F) of this title in accordance with section 2612(d)(2)(B) of this title.
- An employer shall provide paid leave for each day of leave under section 2612(a)(1)(F) of this title that an employee takes after taking leave under such section for 10 days.

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Families First Coronavirus Response Act

- Paid vs Unpaid Leave (con't):

- Subject to clause (ii), paid leave under subparagraph (A) for an employee shall be calculated based on-- (I) an amount that is not less than two-thirds of an employee's regular rate of pay (as determined under section 207(e) of this title); and (II) the number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated under subparagraph (C)).
- Limitation - An employer shall not be required to pay more than \$200 per day and \$10,000 in the aggregate for each employee for paid leave under this section.

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29 U.S.C.A. § 2615

- It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter.
- It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter.
- It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual--
 - (1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this subchapter;
 - (2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this subchapter; or
 - (3) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this subchapter.

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New Jersey A-3848 - March 16, 2020

- An employer shall not, during the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020 concerning the coronavirus disease 2019 pandemic, terminate or otherwise penalize an employee if the employee requests or takes time off from work based on the written or electronically transmitted recommendation of a medical professional licensed in New Jersey that the employee take that time off for a specified period of time because the employee has, or is likely to have, an infectious disease, as defined in section 2 of P.L.2005, c.222 (C.26:13-2), which may infect others at the employee's workplace.
- The employer shall not, following that specified period of time, refuse to reinstate the employee to employment in the position held when the leave commenced with no reduction in seniority, status, employment benefits, pay or other terms and conditions of employment.

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New Jersey A-3848 – March 16, 2020

- If an employer violates the provisions of section 1 of this act, the employee affected by the violation may file a written complaint with the Commissioner of Labor and Workforce Development or initiate an action in a court of competent jurisdiction, to seek reinstatement to employment.
- If the employer is found by a preponderance of the evidence to be in violation, the court or the commissioner shall order the reinstatement the employee to the position previously held with no reduction in seniority, status, employment benefits, pay, and other terms and conditions of employment and fine the employer \$2,500 for each violation of section 1 of this act.

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