

Agency Resource: FAQs related to the Families First Coronavirus Response Act (FFCRA)

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Q: How does FFCRA sick and family medical leave work for temp and backup care workers?

A: All employees (full time, part time, and seasonal) are eligible for paid leave under FFCRA for leave taken between April 1, 2020 and December 31, 2020. Paid Sick leave is to be paid for up to 80 hours at the employee's regular rate. Part time employees are eligible for paid sick leave covering the average number of hours they work in a two week period. A 6-month average can be used to calculate the number of hours for which part time employees are eligible.

Q: Do small business loans and tax credits cover my payroll costs?

A: FFCRA includes a refundable tax credit to completely offset an employer's cost of providing mandatory paid sick leave and paid family leave. FFCRA is intended to minimize the cash flow impact on employers so they can keep employees rather than reduce staff through furloughs or layoffs. We are awaiting IRS guidance on how employers can get reimbursed as quickly as possible, but employers should feel confident that they will be able to claim the credit (thus reducing their tax payments) at the time they file and pay their federal tax liabilities.

The Senate has passed the CARES Act, which includes forgivable loans to small businesses so long as the money is used for qualified expenses such as payroll. This bill is pending a vote in the House on Friday, March 27th and will go to the President for signature if passed.

Q: What is an essential worker, and are nannies considered essential workers?

A: Essential workers are those working in Critical Infrastructure Sectors, as designated by the Department of Homeland Security, or otherwise deemed essential by Federal, State, or Local government orders. Nannies are not listed explicitly as essential workers, however household employers may have jobs that are deemed essential, in which case childcare provided by the nanny may become essential if no alternative is available. If a nanny is willing and able to work in this situation, she/he should do so. The key here is that the family and nanny should have an open discussion about what is best in their situation, and both sides should remember that if the nanny is unable to work because of their own need to care for a child or loved one, they must be granted the required paid leave under FFCRA.



Q: If nannies opt not to work will they get paid sick leave (before and after 4/1)?

A: Payment for leave taken prior to April 1, 2020 is completely at the discretion of the employer. FFCRA only applies to leave taken after April 1st, and all active employees as of that date are eligible for required benefits. An employee who “opts” not to work for any reason other than those listed below is not eligible for the paid leave provided under FFCRA:

- Employee adherence to a Federal, State, or Local quarantine (or stay-in-place order)
- Employee adherence to a physicians direction to quarantine due to illness or suspected illness
- Employee is exhibiting symptoms of coronavirus and is seeking testing or treatment
- Employee is caring for a family member subject to items 1-3 above
- Employee is caring for a child whose school or daycare has closed

Q: What is the difference between a Furlough, a Lay Off, and a Reduction in Force?

A: Under a furlough, an employee’s hours and pay are reduced, in part or in full. The employee retains their position with the company and is still eligible to receive benefits. When furloughed, an employee can apply for unemployment benefits to provide income, meant to provide for their needs until they return to work. When an employee is laid off, the employee is temporarily separated from payroll, with the understanding that they will be recalled when work becomes available. Employees may apply for unemployment while laid off, and the employer may offer to maintain their medical benefits for some period of time as an incentive to be available for recall. A Reduction in Force occurs when a position is eliminated with no intent to refill it.

Q: Do I need to decide about furloughs, layoffs, and reductions in force prior to 4/1, since once an employee requests the FFCRA leave I can't terminate them for asking? What if I need to furlough them half way through the sick leave?

A: We never want to encourage layoffs, and the FFCRA is intended to reduce the need for them by offsetting an employer’s cost of retaining employees. We urge you to first explore the relief Congress is providing and try to find a way to retain your employees.

You cannot terminate an employee who requests paid leave under FFCRA and replace them with another employee. If the work no longer exists and a position can be eliminated, an employer can opt for furloughs, layoffs, or a reduction in force. You should always thoroughly document your reasons for terminating an employee and consider consulting your attorney before doing so.

Q: Is there an exemption for employers with fewer than 50 employees?

A: FFCRA offers an exemption from the leave requirements relating to school closings or child care unavailability for those with fewer than 50 employees if the requirements would jeopardize the ability of the business to continue. The Treasury Department has not issued any additional guidance on this provision, but the government offer of relief provided by the FFCRA and the Cares Act is meant to eliminate the threat to the viability of your business.



Q: If I furlough or lay off our whole temp department prior to 4/1, does that mean I am off the hook for FFCRA? Do I have to tell them how long they will be out of work?

A: You do not have to offer paid leave to employees who are not currently employed. Furloughed or laid off employees would be eligible to apply for unemployment benefits. You do not have to give furloughed or laid off employees a date that the furlough or lay off will end, but you cannot prohibit your employees from searching for other work. By furloughing or laying off your employees rather than providing the paid leave required by FFCRA, you risk a staffing challenge when things return to normal.

Q: Can I furlough or lay off only part of our temps, and keep a few on?

A: Yes, you can reduce your workforce temporarily by furloughing or laying off some employees but not all.

Q: What happens if I send out temps and they get in trouble or they get sick?

A: HWS cannot comment on the risk you are taking and you should consult an attorney to determine your risk and comfort with it.



Family FAQs related to the Families First Coronavirus Response Act (FFCRA)

Q: What Paid Sick Leave is required by FFCRA?

A: FFCRA creates an emergency paid leave provision for the following reasons specifically related to the COVID-19 outbreak:

An employer is REQUIRED to provide up to two weeks (80 hours maximum) of paid sick leave at an employee's regular weekly pay if your nanny or other worker:

- Has a diagnosis of COVID-19;
- Is quarantined at the instruction of a health care professional

An employer is REQUIRED to provide up to two weeks of paid sick leave at $\frac{2}{3}$ of an employee's regular weekly pay if your nanny or other worker:

- Is caring for another person who has or is quarantined for COVID-19;
- Is caring for their child or other dependent who is unable to care for themselves related to the closure of a school or other care facility.

Employers who violate this act and do not pay for sick time can be prosecuted under Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) as a Wage and Hour violation. The employee may file an unpaid wage claim with their state's Department of Labor to recover the unpaid wages and damages.

Q: What Paid Family Leave is required by FFCRA?

A: Employers are also required to provide up to 12 weeks of family leave, with 10 weeks paid, to employees who must:

- Adhere to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus
- Care for an at-risk family member who is adhering to a requirement or recommendation to quarantine due to exposure to or symptoms of Coronavirus
- Care for a child of the employee if the child's school or place of care has been closed, or the child-care provider is unavailable, due to a Coronavirus.

After two weeks of unpaid leave, the employees must be paid no less than $\frac{2}{3}$ of their regular pay. Like with the paid leave provision, employers can receive reimbursement via a refundable tax credit equal to 100 percent of qualified paid sick leave wages paid by an employer, to be applied against Federal employment taxes (FICA). Employees who meet the requirements of the sick leave provision detailed above can use the sick leave to cover the two weeks unpaid at the start of the paid family medical leave.



Q: How will these credits likely get back into the hands of employers?

A: FFCRA includes a refundable tax credit to completely offset an employer's cost of providing mandatory paid sick leave and paid family leave. FFCRA is intended to minimize the cash flow impact on employers so they can keep employees rather than reduce staff through furloughs or layoffs. We are awaiting IRS guidance on how employers can get reimbursed as quickly as possible, but employers should feel confident that they will be able to claim the credit (thus reducing their tax payments) at the time they file and pay their federal tax liabilities.

Q: How can families that were off the books in 2019 fix that?

A: Employers can always go back to file and pay taxes for prior years. You will need to obtain an Federal Employer Identification Number (FEIN), open state tax accounts, complete new hire reporting, file and pay Federal taxes (Form 1040 Schedule H), State unemployment taxes, other State and Local taxes (if applicable), and possibly pay penalties and interest. HomeWork Solutions can help you get caught up on your taxes, and they are currently offering to do so at a steep discount, and for free if you sign up for their service going forward.

Q: What about sick leave up to this point, prior to 4/1?

A: Payment for leave taken prior to April 1, 2020 is completely at the discretion of the employer, subject to terms of a work agreement. FFCRA only applies to leave taken after April 1st, and all active employees as of that date are eligible for required benefits.

Q: If a nanny is furloughed, does the family have to pay out her accrued vacation time?

A: No, accrued leave does not have to be paid out during a furlough. However, an employer risks damaging a relationship with their employee by refusing to approve the use of paid leave that the employee has earned.

Q: How is the FFCRA leave payment taxed for the employer and employee?

A: Paid Leave under FFCRA will be taxable income to the employee and normal taxes apply. Employers will be exempt from the Social Security portion of FICA, and the credit for wages paid for mandatory FFCRA leave will reimburse the employer for the Medicare portion of FICA



Employee FAQs related to the Families First Coronavirus Response Act (FFCRA)

Q: Why should a family keep their nanny employed right now?

A: Helping your employees in hard and uncertain times like this is the right thing to do. However, many household employers are facing uncertain job situations and layoffs on their own, so it is important to understand that the need for a nanny might simply be gone.

Employers whose need for care is reduced or eliminated only temporarily should consider the impact of a furlough to their employee and the damage it may do to the relationship. Sticking by your employee and providing paid leave engenders trust and loyalty that will be rewarded in the future. Most employers want to do this, and the financial relief being provided by Congress through the FFCRA should ease the burden on families and allow them to provide their nanny paid leave at no additional cost.

The most important advice we can give is to have an open and honest dialogue with your employer about your concerns, about their expectations, and about how you can work together to find solutions.

Q: Can a nanny get unemployment if she wasn't paid legally, and what does that mean for the family? What should they do to fix this mistake?

A: A nanny can file an unemployment claim at any time. If the employer did not file their unemployment taxes and wage reports, the process for obtaining benefits may be drawn out as the state investigates the employee's claim of earnings history and eligibility for benefits. The family will likely be required to file and pay their back taxes as well as penalties and interest and the state's unemployment system will alert the Internal Revenue Service as well.

Q: If my hours have been reduced, do I get unemployment benefits?

A: Yes, most states do allow for unemployment claims based on a reduction in hours. You will need to visit the website of your state unemployment agency to confirm this and to file a claim for benefits.

