

SUMMARY OF FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act requires covered employers to provide qualifying employees paid sick leave and paid expanded family and medical leave. The FFCRA's general purpose is to enable employers to keep workers on their payrolls, while at the same time ensuring workers are not forced to choose between their paychecks and the public health measures needed to combat the virus. The law is effective April 1, 2020 through December 31, 2020.

Covered Employer

The FFCRA applies to private employers with fewer than 500 employees. Each covered employer must post in a conspicuous place on its premises a notice of the FFCRA requirements. Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide paid expanded family and medical leave if the leave requirements would jeopardize the viability of the business as a going concern.

Qualifying Employees

An employee qualifies for paid leave under the FFCA if the employee is unable to work [including working from home] for reasons related to COVID-19. Specifically, the employee must be unable to work 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 conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury. (Currently, there are no "other substantially-similar conditions" specified as such by the Secretary of HHS.)

The Kansas City Metropolitan Area and State of Kansas are under “stay at home” orders related to COVID-19. In general these orders direct individuals to stay at home unless performing essential activities, rendering many employees unable to work. These orders qualify as state or local quarantine or isolation orders related to COVID-19 for purposes of qualifying reason [1] above. However, employees for whom the employer has no work are NOT unable to work because of these orders and therefore do NOT qualify for paid leave under qualifying reason [1]. Additionally, employees of essential businesses and/or employees who can work from home are NOT unable to work because of these orders and do NOT qualify for paid leave under qualifying reason [1].

Paid Sick Leave

All employees qualify for two weeks (up to 80 hours) of paid sick leave if they are unable to work for any of the qualifying reasons. Employees unable to work for reasons [1] through [3] above must be paid at their regular rate of pay, not to exceed \$511 per day. Employees unable to work for reasons [4] through [6] above must be paid at 2/3 their regular rate of pay, not to exceed \$200 per day. Part-time employees are eligible for leave for the number of hours the employee works on average over a two-week period.

Paid Expanded Family and Medical Leave

Employees employed for at least thirty (30) days qualify for an additional ten (10) weeks of paid expanded family and medical leave if unable to work for reason [5] above; caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19. For these additional ten weeks, the employee must be paid 2/3 their regular rate of pay, not to exceed \$200 per day.

Tax Credits

Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages under the FFCRA. Employers who pay qualifying paid leave under FFCRA can retain an amount of withheld payroll taxes (federal income taxes and the employees’ and employer’s share of Social Security and Medicare taxes for all employees) equal to the amount of qualifying paid leave paid, rather than deposit such amounts with IRS. If there are not sufficient payroll taxes to cover the cost, employers will be able to file a request for accelerated payment (anticipated to be two weeks or less) from the IRS. Taking the tax credit will reduce the amount of forgiveness the employer is eligible for loans extended under the Paycheck Protection Program.

Anti-Retaliation Provisions

Employees cannot be discharged, disciplined or otherwise subject to adverse job action for taking paid leave under the FFCRA.

Penalties & Enforcement

Employers in violation of the FFCRA will be subject to penalties and enforcement under the Fair Labor Standards Act or Family and Medical Leave Act. There is a temporary period of

non-enforcement for the first 30 days after the Act takes effect (through April 30, 2020) so long as the employer acts reasonably and in good faith to comply with the FFCRA. “Good faith” requires remedying any violations by making the employee whole as soon as practicable and that violations not be willful.

Dated: April 3, 2020; Revised April 9, 2020.