

## **The Family First Coronavirus Response Act: Important Updates for Employers and Employees in 2021**

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In response to the onset of the Covid-19 pandemic, in March 2020, Congress enacted the Families First Coronavirus Response Act (FFCRA) – the first ever paid federal leave program for private employers. The FFCRA as enacted required private employers with less than 500 employees to provide up to 80 hours of paid sick leave at employees' regular rate of pay for employees who were unable to work due to a Covid-19 related quarantine order or while awaiting a medical diagnosis related to suspected symptoms of Covid-19. Employees who were caring for an individual subject to a quarantine order or recommendation, who were caring for a child because the child's school or place of care was unavailable due to Covid-19 precautions, or who were 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," were also entitled to up to 80 hours of paid sick leave, capped at two-thirds (2/3) of their regular rate of pay. Employees who had worked for the employer for at least 30 days and were caring for a child because the child's school or place of care was closed due to Covid-19 precautions were entitled to an additional 10 weeks of leave at two-thirds (2/3) pay.

On December 27, 2020, President Trump signed into law a second Covid-19 stimulus bill. To the surprise of many, the bill did not extend the FFCRA's requirements that covered employers provide paid sick leave for the Covid-19 related events described above. The bill did, however, extend the FFCRA's tax credit, such that employers who wish to provide the paid sick leave at any rate, may continue to benefit from the credit for leave taken through March 31, 2021.

As Covid-19 remains prevalent throughout much of the country, many employers may still wish to take advantage of the program, both as a benefit to their workforce and to disincentivize employees who may be ill from coming to work and infecting others. Moreover, it may provide employers with a means to provide paid leave to employees who are entitled to take unpaid leave under the federal Family and Medical Leave Act at any rate.

The Biden administration has already announced its plan to urge Congress to reinstate and expand upon the FFCRA's requirements. With the Democrats in control of the House of Representatives and their dominance in the Senate, employers' release from these requirements may not last long.

Here, we answer some Frequently Asked Questions about the FFCRA as it currently stands.

## Are there limits to per-employee reimbursements under the FFCRA?

- Employers can be reimbursed for up to *80 hours of sick leave at the employee's regular rate of pay*, where employees are unable to work because they are subject to a government quarantine or isolation order related to Covid-19, have been advised by a health care provider to self-quarantine due to concerns related to Covid-19, or are experiencing symptoms of Covid-19 and are seeking a medical diagnosis.
- Such reimbursements are capped at a maximum of *\$511 per day and \$5,110 total* per employee.
- Employers can be reimbursed for up to *80 hours of sick leave at two thirds of the employee's regular rate of pay*, where employees are unable to work because they are *caring for an individual* who is subject to a government quarantine or isolation order related to Covid-19, or who has been advised by a healthcare provider to self-quarantine due to concerns related to Covid-19, where employees are *caring for a child* if that child's school or place of care is unavailable due to Covid-19 precautions, or where employees are 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."
- Such reimbursements are capped at *\$200 per day, or \$2,000 total* per employee.
- Employers can be reimbursed for up to *10 additional weeks of sick leave at two thirds of the employee's regular rate of pay*, where employees are *caring for a child* whose school or place of care is unavailable due to Covid-19 related precautions.
- Such reimbursements are capped at *\$200 per day, up to \$10,000 total* per employee.

## What portion of wage payments and related taxes are covered by the tax credit reimbursements?

- Employers will be reimbursed for all sick leave wages paid that comply with the guidelines and caps discussed here. The FFCRA tax credit will also extend to amounts employers pay or incur to maintain employees' health insurance coverage during the leave period.
- Sick leave wages for purposes of the FFCRA credit are calculated without regard to federal taxes imposed on or withheld from the wages, including the employee's share of social security taxes, the employee's and employer's shares of Medicare tax, and

federal income taxes required to be withheld. The FFCRA exempts qualified sick leave wages from the employer's share of social security tax.

## **Is an employee caring for a child whose school provides an in-person option but who has decided to keep the child home due to Covid-19 concerns eligible for FFCRA leave reimbursement?**

- In its [guidance on the subject](#), the DOL has stated that in order to be eligible for the FFCRA reimbursements, the employee's child's place of care must be closed. Employees who decide on their own to keep a child home have not experienced a qualifying event.

## **Are employers required to provide job protection for employees who take leave due to a covered Covid-19 related event?**

- While the job protection mandated by the FFCRA is no longer in effect, the federal Family and Medical Leave Act (FMLA) provides up to 12 weeks per year of unpaid job-protected leave for employees to tend to their own medical issues or those of a close relative. In many instances, employees' Covid-19 related leave will fall under the FMLA. One notable exception, without the expanded protection provided by the FFCRA, is leave to care for a healthy child whose school or place of care has been closed. For covered employers and employees, the FMLA's job protection is still in place, and in many instances, employees' leave allotment may have reset on January 1. Additionally, many states and localities, such as New York, California, Connecticut, and Massachusetts, have their own sick leave laws, so employers should review these laws as well to determine their obligations.

**For how long must an employee be employed to be eligible for FFCRA reimbursement?**

- Employees are eligible for up to 80 hours of FFCRA pay based on a covered event regardless of length of employment.
- Employees are eligible for 10 additional weeks of extended FFCRA pay only after they have been employed for 30 calendar days.

**Is an employer eligible for reimbursement where it provides 80 hours of paid leave to the same employee during two separate instances, for example, if the employee was potentially exposed to Covid-19 in April 2020 and again in January 2021?**

- The leave allotment is a one-time benefit that does not reset for the calendar year. Once employees have utilized 80 hours of paid leave, or up to 12 weeks total if they are eligible for extended FFCRA leave, the benefit has been fully utilized.

**Is an employer eligible for reimbursement for sick leave paid to an employee who is exposed to Covid-19 outside the workplace?**

- Yes, the FFCRA applies to any covered circumstances as described here, regardless of how the employee was potentially exposed to Covid-19, including potential exposure outside the workplace.

**Is an employer eligible for reimbursement for sick leave paid to an employee who traveled for leisure and is required to quarantine upon return until testing negative for Covid-19?**

- Yes. As long as the employee is subject to a government-issued quarantine order or has been ordered to self-quarantine due to concerns related to Covid-19, the FFCRA reimbursement applies.

**Is an employer permitted to require an employee who has exhausted FFCRA benefits to use paid time off under the company's sick leave or other paid time off policies?**

- An employer can permit an employee to use other paid time off for Covid-19 related leave. However, PTO is generally an employee benefit that employers cannot force upon employees. If, for some reason, an employee does not wish to utilize PTO, or has exhausted PTO, Covid-19 related leave may be unpaid.

*This article is intended as a general discussion of these issues only and is not to be considered legal advice or relied upon. For more information, please contact RPJ Attorney [Jill Kahn Marshall](#) who counsels both companies and individuals on employment matters. Ms. Marshall is admitted to practice law in New York and Massachusetts. Attorney Advertising.*