



## FAQ's - Frequently Asked Questions The Family First Coronavirus Resource Act (HR 6201)

**Question: If we have an employee that has a social security number, but we are unsure if they are legal, will they be able to get benefits under FFCRA?**

**Answer:** Yes. If you have completed the Form I-9 and don't have specific knowledge to the contrary, you can assume that the employee is legally work-authorized. We do not expect IRS to check SSNs against federal databases (like an E-Verify check would), any more than they do for your usual FICA or other tax reporting. The payments from IRS are not specific worker-by-worker; most of the work is handled by the employer, itself - the ability to not send FICA taxes and the receipt of funds to cover the difference between those amounts and the full cost of providing the paid leave. To the extent that any workers are working on LPR ("green card") status, the receipt of paid leave has been expressly exempted from a "public charge" analysis for when they later seek citizenship or renewal of LPR status.

**Question: Do we have to get a doctor's note for the paid sick leave – 2 weeks for #1 - #3 Qualifying reasons?**

**Answer:** No. DOL Wage and Hour has stated that employers may require a doctor's note before an employee can return to work following a diagnosis of COVID-19, consistent with an existing FMLA and ADA "fitness for duty" policy, but the law does not require the employee to provide nor the employer to request such a note to qualify for the leave.

**Question: We will probably be laying off about half our staff. Will we have problems if some of them are already out on either of the FFCRA leaves?**

**Answer:** The FFCRA prohibits terminating someone because they requested leave, but what you're describing is not in retaliation for asserting their rights, it is a separate business decision. That said, since half of the staff will be let go and half will be retained, it is possible that DOL would construe including those on leave as part of the half who is laid off as this sort of prohibited retaliation. Since the paid leave is reimbursed by the federal government, anyways, the safer course of action may be to let them complete their leave and, if you still do not need a given employee on staff, terminate them then. It will not change your staffing levels or labor costs and would avoid any suggestion of retaliation.

**Question:** We have already paid out some leave for self-quarantining (before the April 1st date) Can we apply for the federal credit on that?

**Answer:** The IRS has indicated that yes, leave paid after the law was signed and before fully enforced by the Department of Labor.

**Question:** Does the expanded family medical leave apply for employees that are working reduced hours when they are sharing childcare with their spouse? For example, I have a guy that is taking off two half days a week due to childcare. That is 8 hours total a week. Does he qualify and can we get the credit on this?

**Answer:** My reading of FMLA and the Public Health Emergency Leave (as well as Emergency Paid Sick Leave) is that paid leave is available to the extent the employee is unable to work. FMLA generally can be taken due to reduced work schedules, if the employee and employer agree. The expanded FMLA builds on existing FMLA, and Congress had dropped language from an earlier draft of the bill that specifically forbid that kind of "intermittent" leave, so the assumption is that it would be permissible and could be credited - but this is an area where further guidance from the Secretary of Labor will be needed to confirm that. Since the employee is unable to work his normal schedule, paid leave that is taken because the employee has to care for a child that is out of school or daycare is eligible for the credit.

**Question:** If someone says that they are qualified to be paid for their time off because they are sick and seeking medical advice (#3), so we pay them for two days of missed work. Then they get better so the determination is that they never had COVID-19 and they can come back to work. Will our organization be allowed to deduct that pay from our FICA insurance?

**Answer:** Yes. The FFCRA phrasing refers to symptoms and "seeking a medical diagnosis" for #3. In that scenario, they would qualify for the paid leave (and you would qualify for the FICA reimbursement) even if he turned out just to have a cold. If he tested positive for COVID, then category #2 would likely apply for the remaining portion of the 2-weeks.

**Question:** Are employees required to show documentation that they are seeking medical advice or that they did not have childcare to qualify for benefits under the act?

**Answer:** Neither the statute nor the DOL guidance so far requires a specific document from workers. But to claim the reimbursement, employers need to be able to document that the worker was out and why the worker was out. Accurate record keeping, including (where possible) requests for time-off made by the employee for leave under this statute, will be essential in ensuring accurate records.

*Here are some frequently asked questions from a webinar on The Family First Coronavirus Resource Act held on March 25, 2020.*