

**Families First Coronavirus Response Act:
What Small Employers Need to Know
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President Trump signed into law on Wednesday, March 18, 2020 the [Families First Coronavirus Response Act \(FFCRA\)](#). The law has a number of provisions, but the two on which this blog post will focus are the amendments to the Family Medical Leave Act (FMLA) and the sick leave benefits. In particular, this blog post will address how these two new provisions will impact smaller businesses, which I define as less than 50 employees. To help make these new provisions easier to digest, I will tackle them in Frequently Asked Question format.

1. How did the law change FMLA leave?

FFRCA expands eligibility for family and medical leave. First, instead of having to work for 12 months before being eligible for 12 weeks of unpaid family or medical leave, employees only need to work for an employer for 30 days before being eligible for 12 weeks of paid leave. However, the first 10 days of leave does not have to be paid. An employee can elect to use any banked paid time off (PTO) during that first 10 days of unpaid leave. Also, the employee may be eligible for paid sick leave under the FFRCA paid sick leave provision (see below).

Another significant change to FMLA is the expansion of the reasons for taking leave. Before, employees could only take leave because they were sick or because they were taking care of a sick family member. FFRCA expands the reasons for leave to include employees who are unable to work or telework because they need to care for a child under 18 years of age if the school or child care center has closed due to COVID 19.

The third big change is the employers to which the new provisions apply. The new paid leave provisions apply to employers with 500 or fewer employees. Larger employers (more than 500 employees) are expected to already have paid leave benefits and therefore are not affected by the new law.

2. How long are the changes in effect?

Until December 31, 2020.

3. How much do I have to pay my employees for their paid FMLA leave?

After the first ten days, employers must pay their employees no less than two-thirds of an employee's regular rate of pay, up to \$200/day and \$10,000 in the aggregate. For hourly employees, employers should pay the employee for the number of hours the employee would otherwise be scheduled to work. If the employee has variable hours,

the employer should calculate hours using a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave.

4. What if I can't afford to pay my employees for the new FMLA leave?

FFCRA allows employers to take a credit against the payroll tax that is equal to 100% of the amount paid to employees who take leave. This tax credit also applies to the new paid sick leave requirement, discussed below.

Also, a new bill making its way through Congress, the [Coronavirus Aid, Relief and Economic Security Act \(CARES Act\)](#) will make available loans up to \$10 million for employers with less than 500 employees. The loans may be used for payroll support, including paid sick, medical or family leave, as well as costs related to the continuation of group health care benefits. Loan payments can also be used for employee salaries, mortgage payments, rent, utilities and any other debt obligations that were incurred because of the pandemic.

According to the Wisconsin State Treasurer, other financial options for businesses in Wisconsin include:

US Small Business Administration (SBA) Disaster Assistance. The SBA will soon be providing Wisconsin small business assistance through their disaster loan program. Governor Evers has already submitted the declaration request, and we expect approval very soon.

To begin preparing your application, small businesses will need:

- Tax Information Authorization ([IRS Form 4506T](#)) for the applicant, principals, and affiliates
- Complete copies of the most recent Federal Income Tax Return.
- Schedule of Liabilities ([SBA Form 2202](#))
- Personal Financial Statement ([SBA Form 413](#))
- Profit and loss statements
- Monthly sales figures ([SBA Form 1368](#))

For more on SBA programs for the coronavirus, please visit www.sba.gov/coronavirus.

WEDC Small Business 2020 Grant Program: Grants to businesses with 20 or fewer part-time or full-time employees that are facing cash flow issues as a result of the COVID-19 outbreak. This program is in partnership with Wisconsin-based Community Development Financial Institutions (CDFIs). To learn more, visit the website: <https://wedc.org/programs-and-resources/small-business-2020/>

Kiva Small Business Lending: KIVA is a nonprofit dedicated to increasing access to capital for entrepreneurs and small businesses. They have expanded eligibility, loan

amounts, and grace periods to help meet the needs of businesses managing the impact of COVID-19. Click [here](#) to learn more.

Finally, it should be noted that FFCRA allows the Secretary of Labor to issue an exemption from the paid FMLA leave requirements for businesses with less than 50 employees if implementing the paid leave would “jeopardize the viability of the business as a going concern.” See FFCRA § 3102 (110(a)(3)(B)) and § 3104. Further guidance on this exemption from the Secretary of Labor is likely forthcoming.

5. Who is eligible for the new paid sick leave requirement?

FFRCA also created a new paid sick leave requirement for employees who work for employers with 500 employees or less who are:

- a) subject to a federal, state or local quarantine or isolation order related to COVID 19;
- b) advised to self-quarantine by a health care provider because of COVID 19;
- c) experiencing symptoms of COVID 19 and seeking a medical diagnosis;
- d) caring for an individual subject to a quarantine order;
- e) caring for a child because the child’s school or child care center is closed; or
- f) experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

6. What is the new paid sick leave benefit?

Employers with 500 or fewer employees must pay full-time employees for 80 hours, regardless of how long the employee has worked for the employer. For part-time employees, employers must pay employees for the number of hours that employee works on average over a 2-week period.

The amount that the employer must pay employees depends on the reason for the leave, as outlined below:

- If an employee takes leave for reasons a, b or c in question 5, above, the employee’s regular rate of pay up to \$511/day (\$5,110 in the aggregate).
- If an employee takes leave for reasons d, e or f in question 5, above, their regular rate of pay up to \$200/day and \$2,000 in the aggregate.

7. Are small employers exempt from the new paid sick leave requirement?

Similar to the FMLA expansion benefit, FFCRA allows the Secretary of Labor to exempt employers with 50 or fewer employees from the paid sick leave requirement if meeting the requirement would “jeopardize the viability of the business as a going concern.” See FFCRA § 5111(2). Whether and when the Secretary of Labor creates such an exemption remains to be seen. See Question #4 for other ideas on how to pay for the sick leave benefit.