Q1: Who is covered by the Families First Coronavirus Response Act (FFCRA)?
A: The FFCRA covers all employers with less than 500 employees. All full-time and part-time employees of covered employers are eligible for Emergency Family and Medical Leave, as long as they have been employed for at least 30 days.

Q2: If an employee becomes ill and unable to work due to confirmed or presumptive COVID-19, what benefits are available to them?
A: Employees who are unable to work because they are quarantined (on order or advice of a health care provider or government agency), and/or experiencing COVID-19 symptoms, awaiting test results, or seeking a diagnosis, are eligible for Emergency Sick Leave as defined by the FFCRA. This leave provides up to two weeks' pay, up to a maximum of $511 per day and $5,110 total. (80 hours for full-time employees, prorated for part-time employees based on average hours worked per week)

Q3: Can we require an employee to use their accrued sick time first before paying them Emergency Sick Leave under the FFCRA?
A: No. Employers may not deduct from the employee’s accrued time off (vacation, sick leave, or PTO) and the employee cannot be required to use their accrued time first.

Q4: What happens if an employee is still not able to return to work after two weeks?
A: Employees may use any of their accrued time off according to your policy. Employers who offer short-term disability should check their policies to determine if these benefits would be available as well.

Q5: Is an employee eligible for Emergency Sick Leave if they are unable to work due to the need to care for an individual with COVID-10?
A: Yes, employees may use the two weeks of Emergency Sick Leave, at 2/3 of their regular pay, not to exceed $200 per day. Please note that the law does NOT stipulate that such care must be for an immediate family member.

Q6: Are employees eligible for Emergency Sick Leave if their child’s school or child care is closed due to COVID-19?
A: Yes. The two-week benefit may also be used due to inability to work caused by school and child care closures, for children under 18 years of age. (The IRS has indicated that there should be documentation of special circumstances regarding the need to care for children over the age of 14.) Employees would receive 2/3 of their regular pay, not to exceed $200 per day.
Q7: If an employee has already used two weeks of Emergency Sick Leave for their illness, are they eligible for an additional two weeks at 2/3 pay, to care for another individual?

A: No. Emergency Sick Leave provides a maximum of two weeks of pay for each employee. However, the employee may be eligible for paid leave under the Emergency FMLA portion of the law if the individual in question is their child. See response to Question 7.

Q8: What benefits are available under Emergency FMLA?

A: If an employee is unable to work (or telework) due to the need to take care of their child(ren) under the age of 18 due to school closures or unavailability of child care, they are eligible for up to 12 weeks of pay at 2/3 of their regular salary, not to exceed $200 per day. The first two weeks of this type of leave is unpaid. However, if not already used for their own illness, employees may choose to use the “Emergency Paid Sick Leave” option described above to pay for those two weeks. As previously noted, the IRS has indicated that there must be proof of “special circumstances” for this type of leave to apply in the case of children over the age of 14 and the employee must represent that no other person will be providing care for the child during the period for which the employee is receiving family medical leave.

Q9: Can an employee use accrued time off such as PTO or sick leave to offset the difference between 2/3 pay and their regular salary, or to receive pay for the unpaid weeks of Emergency FMLA?

A: Yes, an employee may elect to substitute paid leave for unpaid leave or for Emergency Paid Sick Leave (EPSL) the first two weeks of Emergency FMLA. In the alternative, during these first two weeks of Emergency FMLA, an employee can (with the employer’s assent) supplement Emergency Paid Sick Leave with preexisting paid leave, if any, under the employer’s program, but only up to the point the combined total equals the employee’s normal earnings.

After the first two workweeks (usually 10 workdays) of Emergency FMLA, the employee may elect—or be required by his or her employer—to take any remaining EMFL at the same time as any existing paid leave that would be available to the employee for this circumstance, but only up to the point the combined total equals the employee’s normal earnings. This would likely include personal leave or paid time off, but not medical or sick leave if you are not ill.

Q10: What documentation can I require from an employee requesting EFMLA or ESL?

A: This has not specifically been defined by the DOL. Employers may follow their established practices requiring documentation; however, employers are encouraged to be very flexible regarding documentation during this pandemic, as it may be difficult or even ill-advised for employees to visit a physician’s office for mild or moderate infections.

Recently issued guidance from the IRS on documentation is referenced at the end of this document.
Q11: Will the credit union be reimbursed for leave payments under the FFCRA?
A: Yes. Covered employers qualify for dollar-for-dollar reimbursement through payroll tax credits for all qualifying wages paid under the FFCRA. Applicable credits also extend to amounts paid or incurred to maintain the employee’s health insurance coverage. For more information, please see the Dept. of the Treasury’s website. Please consult with your tax advisors and your payroll providers regarding details for reimbursement.

Q12: Do I have any additional responsibilities?
A: The Department of Labor has issued this poster, which must be posted prominently in a location where it can be seen by all employees. It may also be emailed or placed on a company intranet.

Recent IRS Clarifications: Documentation

The IRS has recently issued the following guidance to assist employers with gathering the necessary documentation to be eligible for reimbursement of leave paid under the FFCRA:

“An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if the employer receives a written request for such leave from the employee in which the employee provides:

1. The employee’s name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement that the employee is unable to work, including by means of telework, for such reason.

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person’s name and relation to the employee.

In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee’s inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.”