



THE GAME MANUFACTURERS ASSOCIATION

Coronavirus Paid Sick Leave and Expanded Family Leave Law – Effective April 1, 2020

GAMA members need to prepare for the **Families First Coronavirus Response Act (FFCRA)**, which was enacted into law on March 18, 2020, and takes effect April 1, 2020. **The law covers all private employers with fewer than 500 employees.**

Two Categories of Leave

1. **Paid Sick Leave (up to 10 days)** - employees are eligible for up to two weeks, or 10 days, of paid sick leave, subject to an 80-hour cap for full-time employees.
2. **Expanded Family and Medical Leave (up to 10 weeks)** - Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

The FFCRA goes into effect on April 1, 2020. Employers must comply with the FFCRA from April 1, 2020, until it expires on December 31, 2020.

Small Business Exemptions

Businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability **if the leave requirements would jeopardize the viability of the business as a going concern.** The U.S. Department of Labor (DOL) will issue more details on the small business exemption in a future regulation. But employers wishing to seek the exemption should at this time document why their business meets such criteria.

Employer Reimbursement for Leave

The cost of all paid sick, family, and medical leave incurred under the new law will be reimbursed to companies via payroll tax credits. Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern. Where cost to provide the leave is greater than payroll taxes, the IRS will send a check to the employer to cover the costs. **Please note**

that health insurance costs are also included in the credit, employers face no payroll tax liability and self-employed individuals receive an equivalent credit.

Department of Labor Guidance

The Department of Labor (DOL) has [released its first round of guidance](#) and [required posters](#) for new paid leave mandates enacted by Congress in response to the coronavirus crisis.

The DOL guidance includes:

- [A fact sheet for employers](#)
- [A fact sheet for employees](#)
- [Frequently Asked Questions](#)

Employee Notice

All businesses covered by the law are required to post [this](#) notice, even if you are a small business owner.

Employers may satisfy the notice requirements of the law by emailing or direct mailing the notice to employees or posting the notice on an employee information internal or external website. Since the law only applies to current employees, the notice does not have to be shared with laid-off individuals.

You can obtain the notices free of charge by contacting DOL's Wage and Hour Division at 1-866-4-USWAGE (1-866-487-9243) or you can [download](#) and print the notice yourself.

Paid Sick Leave Eligibility

All employees of businesses covered by FFCRA, regardless of how long they've been employed, are eligible for up to 10 days of emergency paid sick leave. Employees will be eligible if they are unable to work (or telework) because:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to paragraphs (1) or (2).
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
6. The employee is 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.

Even if an employee has already been provided paid leave due to COVID-19, they are still eligible to take paid leave under FFCRA on or after April 1, 2020 through December 31, 2020. The emergency paid sick leave and expanded family and medical leave benefits are not retroactive.

Calculating Pay for Part Time and Variable Hour Employees

The FFCRA provides that for part-time employees, an employer must calculate the average number of hours an employee works in a two-week period to determine the amount of emergency paid leave that the part-time employee is entitled to receive. When the employee's hours vary, the employer can use a two-week average for the past six months.

If the employee has not been employed for the previous six months, the employer can look to the number of hours that the employer and employee agreed that the employee would work upon hiring. If there is no agreement, the employer should use the average number of hours per day the employee was scheduled to work during the term of employment.

The calculation of paid leave benefits under the FFCRA is based on the employee's regular rate of pay subject to the caps specified in the law. The regular rate of pay is calculated based on the average of an employee's regular rate of pay as defined under the FLSA, for a period of up to six months prior to the date the employee takes leave.

Overtime worked by an employee must be included for calculating the number hours paid to an employee in a single workweek under the Emergency Paid Sick Leave Act, subject to the 80-hour cap. However, an employee's overtime premium is not used to calculate the employee's regular rate of pay for purposes of calculating the amount of the paid leave benefit.

Next Steps

Several questions about the FFCRA remain unanswered. DOL will issue further guidance, including additional fact sheets and question-and-answer documents, on a "rolling basis."

DISCLAIMER: *Please note that the situation surrounding COVID-19 is evolving and that the subject matter discussed may change on a daily basis. This should not be considered legal advice and employers are encouraged to consult with an attorney licensed in their state.*

Updated March 31, 2020