



For Veterinarians By Veterinarians®

**UPDATED** [March 25, 2020](#)  
[March 26, 2020](#)  
[March 27, 2020](#)  
[April 1, 2020](#)  
[April 5, 2020](#)

The Federal government has passed the “Families First Coronavirus Response Act” on March 18, 2020, and the law will go into effect April 2. What does that really mean?

While the Act does a number of things, including providing a funding source for various assistance programs, it also provides paid leave to employees under two separate main provisions. These two provisions, and the tax credit system aimed at reimbursing employers for 100% of the related costs, can be summarized as follows:

### **Emergency Family and Medical Leave Expansion Act**

As a quick refresher, the FMLA (Family Medical Leave Act) is a federal law that normally requires employers that have 50 or more employees to give their employees up to 12 weeks of unpaid leave for specific family and medical reasons like the birth of a child, or due to a serious health condition, all while protecting their job so that they can return to it when the leave is over.

This part of the new law changes how FMLA functions through December 31, 2020. Specifically:

1. It adds a new qualifying reason for an employee to seek FMLA leave: an employee can now take “Emergency Leave” of up to 12 weeks if they are unable to work or telework because they must take care of their own minor child where the child’s school or childcare provider is closed due to a public health emergency.
2. For this new type of leave, it changes the employee count threshold from 50 or more employees, to now covering all employers with less than 500 employees.

Note: the law gives the possibility of regulations that exempt small business with less than 50 employees if this expanded FMLA will jeopardize the viability of the business. But there are no regulations yet in effect (stay tuned for updates).

3. It lowers the eligibility requirement so that any employee who has worked at least 30 days prior to the first day of leave is eligible for this new leave.
4. Unlike other categories of FMLA leave, this new qualifying Emergency Leave is a paid leave. The employer may choose to not pay for the first 10 days of such Emergency Leave, although that initial period may be covered under the new Emergency Paid Sick Leave Act (see discussion below). The employee can choose to swap available paid leave like vacation, PTO, or sick leave, to cover any of that period. After the 10 days, the employer must pay for the leave:
  - a. Full time employees are to be paid 2/3 of their regular rate based on the number of hours the employee would otherwise have been normally scheduled – limited to \$200 per day and \$10,000 in the aggregate per employee.
  - b. Part time employees get paid based on the average number of hours the employee has worked for the 6 months before taking Emergency Leave. If they have worked for less than 6 months, then the math is based on their reasonable expectations of average number of hours to be scheduled, when they were hired.



*For Veterinarians By Veterinarians®*

5. When employees return from Emergency Leave:
  - a. Employers with 25 or more employees, have the same requirements as under normal FMLA to restore a returning employee to their equivalent position.
  - b. Employers with less than 25 employees are generally excluded, if the position doesn't exist because of economic downturn, etc., due to the public health emergency during the leave – but it requires the employer to still make reasonable attempts to return the employee to an equivalent position for up to a year following leave.

Note that the regular FMLA standards still apply for the traditional type of leave. So, if an employee is infected by COVID, and such infection is deemed a serious health condition, they may be entitled to unpaid leave of up to 12 weeks and protection of their job, just like before. Also, this new qualifying reason doesn't add or change the existing leave count: employees still have a combined total of 12 weeks of FMLA leave regardless of the reason for which leave is taken, so if they have already used some leave for another qualifying reason, they would only have the remaining period available now.

### **Emergency Paid Sick Leave Act**

This is the other substantial change in law, which also applies through the end of the year. Under the new legislation, an employee is allowed to take paid sick leave in a number of COVID related circumstances.

The law applies to all employers with less than 500 employees, and requires them to provide full time employees up to two weeks (80 hours) of paid sick leave at their regular rate of pay, or at 2/3 of their rate of pay, depending on the reason for their absence (see below).

1. Full time employees are eligible for paid sick leave at the full rate of pay if they:
  - a. Are quarantined due to federal, state or local law
  - b. Are advised by a health care provider to self-quarantine, because of the virus
  - c. Have COVID symptoms and are seeking a medical diagnosis
2. Full time employees are eligible for paid sick leave at 2/3 of their rate of pay if they are:
  - a. Caring for an individual (not just a family members) that meets either of the above requirements, or
  - b. Caring for their own child, if the child's school or place of care is closed due to public health emergency
3. Part time employee are also eligible, but based on the average number of hours worked for the 6 months prior to taking the leave (and for those who have worked for less than 6 months, the calculation is based on the average number of hours worked over a 2-week period).
4. Paid sick leave wages are capped:
  - a. If for their own use, they are limited to \$511 per day up to \$5,110 per employee
  - b. If to care for others, they are limited to \$200 per day up to \$2,000 total.
5. The coverage is in addition to any paid sick leave already provided by the employer and cannot carry over to the next year.

To coordinate time off between the Emergency FMLA Leave and the Emergency Sick Paid Leave, an employee is allowed to request pay for the two weeks (80 hours) of emergency sick leave instead of the initial 10 days of unpaid leave under the revised FMLA system.



For Veterinarians By Veterinarians®

-oOo-

**Every employer reading this is wondering how they will be reimbursed:**

The intent of the new law is to reimburse employers for 100% of the wages they pay their employees under the above two programs. This is done through a system of refundable tax credits (a “refundable” tax credit means you get a refund even if it is more than what you owe in taxes). This is somewhat complex, but basically functions like this:

1. The tax credit is allowed against the employer portion of Social Security taxes. This, of course, limits the application of the credit.
2. Because of this limitation, employers will be reimbursed if their costs under either of the two programs (emergency family leave or emergency sick leave) exceed the social Security Taxes they would owe.
3. The reimbursement is done through a refundable tax credit equal to 100% of the qualified wages paid for each calendar quarter. Therefore:
  - a. Under the Emergency FMLA leave, it would mean up to \$200 per day for each individual, up to \$10,000 total per calendar quarter.
  - b. Under the Emergency Paid Sick Leave Act, that would mean up to \$511 per day (or \$200 per day if caring for another), for up to 10 days per employee in each calendar quarter.

The exact mechanism of the credits/refunds is awaiting regulations which are now being drafted. The expectation is that the credits will go against monthly/quarterly installments paid by the employer, thus reducing the taxes owed. That means payroll companies will need to quickly revamp their systems to accommodate these new leaves to keep track of the wages paid and payroll taxes owed, and your tax preparer will need to offset your quarterly taxes by the amounts that exceed payroll taxes. As soon as we know more about how this mechanism works, we will provide an update.

Note that these tax credits are the reason why employers with 500 or more employees are not covered – they are expected to be able to fund their own sick and family leave, without the need for the U.S. taxpayer to subsidize such benefits.

The regulations are being drafted are also expected to deal with the much desired exemption for smaller employers, as well as the requirements for giving employee notices of the new law - a model notice must be provided by the Secretary of Labor by March 25,2020.

-oOo-



For Veterinarians By Veterinarians®

**UPDATED March 25, 2020**

The United States Department of Labor (“DOL”) has issued “compliance assistance” for employers and employees to better understand the recently passed Families First Coronavirus Response Act. These are not the implementing regulations we are all waiting for, but they do help shed some light on a few topics. By way of quick summary:

1. The DOL will be using April 1, 2020, as the effective date for the Act, despite that being a day earlier than the 15-day deadline that was set by statute. That means employers who provide benefits under this new Act can claim 100% payroll tax credit starting a day early as well.
2. Although the regulations clarifying how the exemption for small employers (those with less than 50 employees) haven’t been issued yet, it appears this exemption is in the works since the DOL notes that

“To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations”

The “criteria” as stated in the Act is stated as “when the imposition of such requirements would jeopardize the viability of the business as a going concern”. That is – your business will fail and you will need to close permanently if you are made to provide these benefits.

3. A clarification was provided that when calculating pay due to employees, employers need to include overtime hours (but the paid sick leave is still capped at 80 hours total).
4. The DOL confirms that an employer can’t deny leave After April 1, just because they provided some paid leave for similar reason before that date. This is a new type of leave. They also clarified that this leave is not retroactive – you cannot get tax credits for leave you gave prior to April 1.

For specific DOL language, see here for employer requirements

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>, here for employee requirements

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>, and here for general FAQ

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.



For Veterinarians By Veterinarians®

**UPDATED March 26, 2020**

The U.S. Department of Labor (DOL) and the IRS have issued further guidance and clarification on the recently enacted Families First Coronavirus Response Act. The information includes an employee notice poster, information about enforcement delay, small-business exemptions, and the tax-credit mechanism that reimburses employers who provide employees with the required paid leave. In summary:

1. Although the act is to take effect on April 1, the DOL will not bring any action against employers for failure to make payments required under the law until after April 17, in order to provide employers time to deal with cash flow. To obtain this leniency, the employer must act “reasonably” and in “good faith” to comply with the act, and pay “as soon as practicable.” In essence, that means paying everyone what they are owed from April 1, by April 17. The full DOL bulletin detailing this is available [here](#).
2. The IRS clarifies that the payroll taxes that are available for retention against the cost of eligible leave are not only the employer’s share of Social Security taxes but “include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.” If that is not enough, the employer is then to file a request for reimbursement, and the “IRS expects to process these requests in two weeks or less.” Furthermore, the IRS confirmed that the cost of continuing employer-provided health insurance can be included in the dollar-for-dollar reimbursement of an employee’s cost while on paid leave. We are still waiting for details, but this now reads much better than before. The full IRS news release on the topic is available [here](#).
3. The IRS also confirmed that small businesses with fewer than 50 employees will be eligible for some exemption – specifically from the school closure leave — but, again, we are waiting for the rulemaking standards to be issued.
4. A poster to advise employees of their rights under the new law is now available for download [here](#). It must be posted in a conspicuous place, where employees can see it, no later than April 1. For telecommuting employees, the notice can be emailed, mailed or posted on an employer’s Intranet by the same deadline. There is no requirement yet to post it in different languages. Note that this need not be sent to laid off employees – only current employees (and, of course, new ones, as they are hired through year-end). The posting is required even by employers with fewer than 50 employees.



For Veterinarians By Veterinarians®

### UPDATED March 27, 2020

On March 27, 2020, the US Department of Labor (“DOL”) issued another guidance/clarification to the recently enacted Families First Coronavirus Response Act, addressing various items including temporary or permanent closures while employees are on leave, documentation that can be required of employees to use paid leave, and intermittent use of leave.

In summary:

1. The Feds confirmed that **if an employer must close shop** – whether that closure is permanent or temporary - while an employee is on paid leave, the benefit entitlement ends as of the date of the closure (although the employee can then apply for unemployment).
  - a. This is true whether the closure is due to “lack of business or because it was required to close pursuant to Federal, State or local directive.”
  - b. This is also true if the employer “furloughs” the employees “because it does not have enough work or business.”

Of course, an employer may have good incentive to not shutter their business and not furlough employees under the new CARES Act signed into law March 27, 2020 (link of VIN’s summary of new law is forthcoming).

2. The DOL confirmed that if an employee’s **hours are reduced** due to lack of work, the paid leave is not triggered (although, again, they can then apply for unemployment if their state allows for coverage due to reduction of hours).
3. For those employers providing **other leave entitlements like PTO** (whether such accrued leave already existed, or is being provided now), the DOL clarified that the employer provided leave can be used to supplement the paid leave under the new Act up to the regular wage rate of the employee taking leave. For instance, if an employee is getting 2/3 of their normal wage under one of the qualifying events for the Act, available PTO can be used to provide the remaining 1/3. But the employer cannot require an employee to use existing leave in this way, and no tax credit will be allowed for such additional entitlements.
4. If an employee was provided **health insurance benefits** before taking leave, that coverage needs to be maintained while the employee is on protected leave offered by this Act. The employer’s cost of such health care during the leave will be reimbursed through the tax credit system.
5. For **intermittent paid leave** under the Act, the guidance notes that whether or not this is allowed depends on the nature of the leave (e.g., taking care of a healthy child at home because of school closure, versus one with illness/symptoms) and whether some work can be done remotely. Specifically, the DOL states that it is taking a more rigid approach if an employee is sick, possibly sick, or caring for a person who is sick or possibly sick, because the intent of this new Act is to keep sick or exposed employees away from work and keep them from spreading the virus to others. To enforce this distinction, the DOL clarifies as follows:



For Veterinarians By Veterinarians®

- a. If an employee is using their allotted 80 hours of Paid Sick Leave under the Act specifically because they have a healthy minor child home from school, but the employee is able to still report to work (e.g., they can find alternative care 2 days a week, and so can come to work for those 2 days per week), the employer and employee can agree to intermittent use of the Paid Sick Leave under the Act.
  - b. If an employee needs to take Paid Sick Leave under the Act and can telework, then regardless of the qualifying reason, Paid Sick Leave or FMLA leave can be taken intermittently by agreement between employer and employee (e.g, if the agreement is for 90-minute telework increments, the employee can telework from 1 pm to 2:30 pm, then take leave from 2:30 pm to 4:00 pm, then return to teleworking).
  - c. But, if an employee needs to take Paid Sick Leave under the Act for any other reason (e.g., they have COVID symptoms; they are taking care of someone else with symptoms; etc.) and cannot telework, they must take the leave in whole day increments until either they have used up their full amount of leave, or the qualifying reason for taking the leave no longer exists. Again, this enforces the idea that they must stay away from work as long as possible to avoid getting others sick.
6. To be able to get tax credit and fall under the new Act leave requirements, the employer must get **documentation** in support of the reason for leave. We are waiting for more clarity as to what the IRS will require, but from the standpoint of the Act, this documentation should include:
- a. Proof of the qualifying reason (e.g., copy of the quarantine order; name of health care provider who has advised the employee to self-quarantine; notice of school closure; email from day care provider of closure);
  - b. Statement that the employee is unable to work, including telework, due to the qualifying reason; and
  - c. Dates for which leave is requested.
7. This most recent Federal guidance attempts to clarify what it means to be “**unable to work for COVID-19 related reasons**”. Essentially, it means:
- a. The employer has work for the employee – whether at the regular worksite or through telework, whether following the normal work schedule or a modified one; and
  - b. The employee cannot perform that work because of one of the qualifying reasons defined in the Act (see full discussion to which this update is attached).

Shifting a work schedule that is inconvenient to the worker does not fit the definition of “unable to work.” For instance, if a kennel worker normally works a 10 am to 2 pm shift, and instead is asked to work 8 pm to midnight to reduce contact with other employees, they are still deemed to be “able” to work and thus are not eligible for paid leave.

The full DOL guidance is available here: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>



For Veterinarians By Veterinarians®

**UPDATED April 1, 2020**

The U.S. Department of Labor (DOL) issued further guidance for the recently enacted Families First Coronavirus Response Act. This guidance includes **the long anticipated exemption for small employers.**

In summary:

1. **Small Business Exemption:** the DOL has clarified on how **employers with less than 50 employees can be exempted** from providing leave due to a COVID related closure of a child's school or place of care. To do so, an officer of the employer must internally document (i.e., don't send anything to the DOL) **one** of the following conditions:
  - Allowing the leave would result in business expenses and financial obligations that exceed the employer's revenues and will cause the business to stop operating, even at minimal capacity;
  - The absence of the employee requesting leave would result in substantial risk to the financial health or operational capabilities of the business, because of the employee's specialized skills, knowledge of the business, or responsibilities; or
  - There are not enough workers available – who are able, willing, and qualified – to perform the services provided by the employee requesting leave, and such services are needed to be able to operate at a minimal capacity.

Note that the above is an exception to the **school or place of care closure leave ONLY**, under both the Emergency FMLA and the Sick Leave Act. That means the employer, even if it has less than 50 employees, **must still provide up to 80 hours of paid leave** for any of the other qualifying reasons (e.g., employee with COVID symptoms, employee taking care of someone else with COVID symptoms, etc.).

2. **Availability of traditional FMLA leave:** if an employee uses the full 12 weeks of Emergency FMLA leave, they will **not be eligible for additional FMLA leave** for 1 year (including for a serious medical condition).
3. **Who can determine an employee is eligible for leave due to health reasons:** For the purpose of the Act, a "health care provider" that can advise an employee to self-quarantine is a licensed doctor of medicine, nurse practitioner, or other health care provider that can issue a certification under the FMLA.
4. **How do you determine if an employee is full time or part time for the purpose of paid sick leave under the Act:** a "full time employee" is one who is normally scheduled to work 40 or more hours per week. A "part time employee" is normally scheduled to work less than 40. For the Emergency FMLA leave, there is no distinction needed because their leave is based on their historical pay.



For Veterinarians By Veterinarians®

**UPDATED April 5, 2020**

The underlying regulations implementing the Families First Coronavirus Response Act have been issued, and the Department of Labor (DOL) has further clarified the paid family and sick leave of the Act. This summary provides important highlights from the regulations and DOL guidance, and includes the **tax form for claiming reimbursement**, more about the **small business exemption**, and explanation of a number of **critical definitions** that may affect you.

1. When an employer provides paid leave under the Act, they get 100% of that cost covered. They do this by taking a credit against payroll taxes, and then **seeking a reimbursement of the rest from the IRS**. That method of reimbursement is now “live”, and done by filing IRS Form 7200 (<https://www.irs.gov/forms-pubs/about-form-7200>). For example, if an employer is entitled to \$10,000 in reimbursement, and is required to make a deposit of \$8,000 in employment taxes, they would first retain the entire \$8,000 as a portion of the refundable tax credit, and then file a request for the remaining \$2,000 by using Form 7200.
2. The **small business exemption** for employees with less than 50 employees requires the business to certify one of three conditions (see [here](#)). To avoid abuse of the small business exemption, the DOL clarified that ***the exemption only applies when absence of the employee requesting leave would harm the employer’s business.***
3. Since an employee can receive paid sick leave due to a Federal, State or local quarantine, a question arose as to how that is defined. The DOL has made it clear that these include any quarantine or isolation orders, **including shelter-in-place or stay-at-home orders**, issued by any government authority “that cause you to be unable to work (or to telework) even though your employer has work that you could perform”. This is known as a “but for” test: **the paid leave is available only if the employee could work “but for” the qualifying reason**. It emphasizes the prior guidance that ***if there is no work and the employee must be furloughed, then no paid leave is due.***
4. Employees can receive paid leave if they are advised by a health care provider to self-quarantine because of the virus. It wasn’t clear how broadly that applies. The DOL noted that it **applies where a health care provider believes an employee may have COVID, or that the employee is particularly vulnerable to COVID.**
5. On the other hand, if an employee becomes ill with COVID symptoms, but **does not seek medical diagnoses or advice from a health care provider, and stays home for two weeks, they do NOT qualify.**



For Veterinarians By Veterinarians®

6. Since paid leave applies when an employee is **taking care of someone who is subject to a quarantine, isolation, or shelter-in-place order**, the DOL took more care in defining when that applies. First, that “someone else” must “genuinely need” the care of the employee. That means they expect or depend on such care. Second, the relationship to that person need to be like an immediate family member or someone who regularly resides in your home. It would include other relationships, however, if such relationship created an “expectation” of care.
7. With respect to care for children whose school or care is closed, the DOL clarified that if there is **another parent or guardian available** to care for a child, there is generally no “need” triggered, and thus **no paid leave is available**. They also confirmed that **children 18 or older** would be **included if they were not capable of self-care** because of a mental or physical disability. Finally, they noted that even **if a school moves to online instruction**, they are **still deemed “closed”** for the purpose of the Act.
8. The DOL clarified **how to handle part-time employees**. When calculating pay, full-time employees are entitled to 80 hours. But part-time employees are entitled to the “number of hours that such employee works, on average over a 2 week period.” Thus, part-time employees with varying weekly schedules are entitled to paid sick leave for a number of hours equal to 14 times the number of hours that the employee was scheduled per day, averaged over the past 6 month period. Alternatively, the DOL provides that employers may also use “twice the number of hours that an employee was scheduled to work per workweek, averaged over the six-month period.”
9. With the expectation that **employees may leave one employer for another** during the pandemic, the DOL confirmed that the 80 hours of paid leave is an absolute limit: an employee is **not entitled to additional leave from a future employer**.