



A Breakdown of the Family First Coronavirus Response Act

The **Families First Coronavirus Response Act (FFCRA)** was signed into law on March 18, 2020 and requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.

The law provides certain employees with two types of paid leave for COVID-19-related emergencies: (1) emergency paid sick leave and (2) public health emergency leave. These new guarantees are likely to affect yoga businesses and employees across the country. The law also provides employer tax credits to help employers recoup the costs of leave payments.

The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's leave requirements. These provisions will be in effect from **April 1, 2020 through December 31, 2020.**

DISCLAIMER

The information contained in this update does not constitute legal advice and no attorney-client relationship is formed based upon the provision thereof.

Emergency Paid Sick Leave

What is Emergency Paid Sick Leave?

Under the law, certain employers are required to provide employees with two weeks of paid sick time if the employee is unable to work (or telework) for one of the following six (6) coronavirus-related reasons:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to the coronavirus;
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to the coronavirus;
3. The employee is experiencing symptoms of coronavirus and is seeking a medical diagnosis;
4. The employee is caring for an individual who is subject to a quarantine or isolation order or advised to self-quarantine by a health care provider;
5. The employee is caring for a child whose school or care provider is closed or unavailable due to coronavirus precautions; and
6. The employee is experiencing any other condition substantially like the coronavirus, as specified by the U.S. Department of Health and Human Services (HHS).

Which employers and employees are covered?

Eligible employees include those who work for employers with fewer than 500 employees, regardless of how long the employee has been on the job. This very likely includes most yoga businesses in the United States. The law does, however, provide a possible exemption for businesses with fewer than 50 employees. This exemption is detailed below.

The law does not address benefits for individuals working as independent contractors.

What paid sick time is required?

Full-time employees are entitled to 80 hours of paid sick leave. Part-time employees are entitled to the number of hours that the employee works, on average, over a two-week period. For hourly employees whose schedules vary, the employee's paid leave rate should equal the average number of hours that the employee was scheduled per day over the six-month period prior to the leave. This includes hours in which the employee took leave. If the employee did not work during this period, the employee's reasonable expectation of the average scheduled daily hours his/she would work.

Employees who take paid sick leave because they are subject to a quarantine or isolation order, have been advised by a health care provider to self-quarantine, or are experiencing coronavirus symptoms and seeking medical diagnosis (reasons 1 through 3 listed above) are entitled to be paid at their regular pay rate or at the federal, state or local minimum wage, whichever is greater. In these circumstances, the paid sick leave rate may not exceed \$511 per day, or \$5,110 in total.

Employees who take paid sick leave to care for someone else or because they are experiencing another substantially similar illness (as specified by HHS) (reasons 4 through 6 listed above) are entitled to be paid at two-thirds their regular rate. In these circumstances, the paid sick leave rate may not exceed \$200 per day, or \$2,000 in total.

How long will employees be entitled to this coronavirus-related paid sick leave?

The paid sick leave provided under the Families First Act must be available to eligible employees through December 31, 2020.

Public Health Emergency Leave

What is Public Health Emergency Leave?

Under the law, eligible employees have the right to take 12 weeks of job-protected leave if the employee is unable to work (or telework) because they must care for a child whose school or care provider is unavailable due to a COVID-19 emergency as declared by a Federal, State, or local authority.

Which employers and employees are covered?

Eligible employees are those who work for employers with fewer than 500 employees who have been on the job for at least 30 days. This very likely includes most yoga businesses in the United States. Like with the paid sick leave provision, the law provide a possible exemption for businesses with fewer than 50 employees. This exemption is detailed below.

The law does not address benefits for individuals working as independent contractors.

What paid leave is required?

Eligible employees have the right to take 12 weeks of leave. The first 10 days may be unpaid. The employee can choose to substitute other paid leave during these 10 days.

After 10 days of unpaid leave, the employer must provide paid leave at two-thirds of an employee's regular rate of pay up to \$200 per day or \$10,000 in the aggregate. For hourly employees whose schedules vary to the extent that an employer cannot determine the exact number of hours the employee would have worked, the employee's paid leave rate should equal the average number of hours that the employee was scheduled per day over the six-month period prior to the leave.

What does "job protected leave" mean? Do employers have to restore employees to their previous position?

Eligible employees who take emergency paid leave are entitled to be restored to the position they held before leave (or an equivalent position).

However, the Act limits this rule for employers with fewer than 25 employees, which will be the case for many yoga businesses. For these businesses, if an employee takes emergency leave, the employer does not need to return the employee to their position if:

- The position does not exist due to changes in the employer's economic or operating condition that affect employment and were caused by the coronavirus emergency;
- The employer makes "reasonable efforts" to restore the employee to an equivalent position; and
- If these efforts fail, the employer makes an additional reasonable effort to contact the employee if an equivalent position becomes available. The "contact period" is the one-year window beginning on the earlier of (a) the date on which the employee no longer needs to take leave to care for the child or (b) 12 weeks after the employee's paid leave commences.

How long will employees be entitled to this public health emergency leave?

The emergency leave provided under the Families First Act must be available to eligible employees through December 31, 2020.

PAID SICK LEAVE AND PAID PUBLIC HEALTH EMERGENCY LEAVE SMALL BUSINESS EXCEPTION

The Act gives the Department of Labor (DOL) the authority to exempt small business with fewer than 50 employees if adhering to the bill's paid sick leave and paid public health emergency leave requirements would jeopardize the viability of their business. This exemption may be important for small yoga businesses.

According to recently released DOL guidance, a small business is exempt from mandated paid sick leave requirements if the:

- Employer (including a religious or nonprofit organization) employs fewer than 50 employees;
- Leave is requested because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; and
- An authorized officer of the business has determined that at least one of the three following conditions is satisfied:
 - A. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
 - B. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
 - C. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

The DOL still states that employers should not send any materials to the DOL but this guidance sheds light on the documentation yoga businesses can begin to gather if they plan to take advantage of this exemption provision. The DOL will not be enforcing the FFCRA until **April 17, 2020**, which provides more time for additional guidance.

Employer Tax Credits

What is Public Health Emergency Leave?

The Act provides for employer tax credits to offset the costs associated with the paid public health emergency leave and sick leave requirements.

What is the tax credit?

The law provides a refundable tax credit worth 100 percent of qualified public health emergency leave wages and qualified paid sick leave wages paid by an employer for each calendar quarter through the end of 2020. The tax credit is allowed against the tax imposed under the employer portion of Social Security payroll taxes.

What is the credit amount?

The law allows employers to take tax credits for qualified public health emergency leave wages and qualified sick leave wages:

Credit Amount for Sick Leave Wages.

In instances when an employee receives paid sick leave because they are subject to a quarantine or isolation order, have been advised by a health care provider to self-quarantine, or are experiencing coronavirus symptoms and seeking medical diagnosis, the amount of qualified sick leave wages taken into account for each employee is capped at \$511 per day.

In instances when an employee receives paid sick leave because they are caring for another individual or child or because they are experiencing another substantially similar illness (as specified by HHS) the amount of qualified sick leave wages taken into account for each employee is capped at \$200 per day.

Credit Amount for Public Health Emergency Leave Wages. The amount of qualified public health leave wages taken into account for each employee is capped at \$200 per day and \$10,000 for all calendar quarters.

Credit for Health Plan Expenses. Under the law, the public health emergency leave and paid sick leave credits would be increased to include amounts employers pay for the employee's health plan coverage while they are on leave.

Is that tax credit refundable?

The amount of the paid sick leave credit that is allowed for any calendar quarter cannot exceed the total employer payroll tax obligations on all wages for all employees. If the amount of the credit that would otherwise be allowed is so limited, the amount of the limitation is refundable to the employer.

Are there any limits on the tax credit?

Employers may not receive the tax credit if they are also receiving a credit for paid family and medical leave under the 2017 Tax Cuts and Jobs Act (P.L. 115-97). Employers would instead have to include the credit in their gross income.

Additional Guidance

The Department of Labor published guidance on FFCRA paid leave, including:

- A fact sheet for [employees](#);
- A fact sheet for [employers](#); and
- A [questions and answers document](#).