

Family First Coronavirus Response Act Policy (FFCRA)



On March 18, 2020, the President signed into law the Families First Coronavirus Response Act (FFCRA). The Act provides temporary relief for those affected by the Coronavirus outbreak. **This new Act is effective April 1, 2020 and is in place until December 31, 2020.**

The Act applies to all public sector employers. Emergency responders are excluded from this Act with the exception provided on page 3.

Definition of Emergency Responder

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

For the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, an emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state's or territory's or the District of Columbia's response to COVID-19.

The Act provides two separate paid leave employment benefits for employees forced to miss work because of COVID-19.

I. Emergency Family and Medical Leave COVID-19 Benefit

1. Benefit Provided

- a. Expands FMLA to employees who are unable to work (or telework) and need leave to care for a child under 18 if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable due to a public health emergency.
- b. The first 10 days of leave taken by the employee are unpaid. However, the employee may elect to substitute available paid vacation leave, personal leave or medical or sick leave. The employer must provide paid leave for the remaining 10 weeks of FMLA leave.
- c. The paid leave must be an amount that is not less than two-thirds of an employee's regular rate of pay and the number of hours the employee would otherwise normally be scheduled to work.
- d. Benefits are capped at \$200 per day and \$10,000 in the aggregate.

2. Employee Eligibility

- a. Any employee employed for at least 30 days as of the date leave is requested is eligible for leave.

3. Job Restoration

- a. Employees will have the same job restoration obligations as exist under the traditional FMLA.

II. Emergency Paid Sick Leave Act

1. Paid Sick Time Benefit and Usage

- a. Full-time employees are entitled to 80 hours of paid sick leave (10 workdays) and part-time employees are entitled to a number of hours equal to the number of hours that such employee works, on average, over a 2-week period.
- b. **Compensation for paid sick time will be calculated at the employee's regular pay rate up to a maximum of \$511 per day and \$5,110 in the aggregate for employees using paid sick leave for the following:**
 - The employee is subject to a quarantine or isolation order related to COVID-19.
 - The employee has been advised by a health care provider to self-quarantine due to COVID-19.
 - The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- c. **Compensation for paid sick time will be calculated at two thirds of the employee's regular pay rate up to a maximum of \$200 per day and \$2,000 in the aggregate for employees using paid sick leave for the following:**
 - The employee is caring for an individual who is subject to a quarantine order or has been advised to self-quarantine.
 - The employee is caring for their child if the child's school or childcare has been closed, or the childcare provider of such child is unavailable due to COVID-19 precautions.
 - 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 Secretary of Labor.

2. Employee Eligibility

The act applies to any individual who is an employee under the FLSA regardless of how long that individual was employed with the employer (does not matter how long employee has been employed).

3. Other Provisions

- a. Paid sick leave must be provided in addition to other paid leave an employer provides and employees cannot be required to use other paid leave first.
- b. Paid sick time not used at the time of termination, resignation or retirement does not need to be paid out to the employee. It does not carry over to the following year.
- c. Employers are required to post and keep posted, in conspicuous places on the premises of the employer where notices to employees customarily are posted, a notice to be prepared by the Secretary of Labor.
- d. Violation of the paid sick leave requirements is viewed as violation of the minimum wage requirements of the FLSA.

III. How these provisions work together

1. For workers who need time off to care for children with closed schools/daycares:
 - a. First 80 hours covered by paid sick leave provisions; 2/3 pay provided with cap of \$200 per day or \$2000 in the aggregate.
 - b. FMLA benefits start on eleventh day and run for 10 weeks.
 - c. Pay during FMLA period is 2/3 regular pay subject to cap of \$200 per day and \$10,000 in the aggregate.
 - d. During FMLA period employee may use accrued time to cover pay gap.

IV. Intermittent use of paid leave and expanded FMLA leave

1. Employees working at usual worksite

- a. For employees who are working at their usual worksite (i.e., the employee is not teleworking), statutory paid sick leave benefits cannot be used intermittently for leave due to: 1) federal, state, or local quarantine or isolation orders, 2) self-quarantine mandated by a health care provider, 3) symptoms of COVID-19 and seeking a medical diagnosis, 4) caring for an individual under quarantine, or 5) any substantially similar condition specified by the federal DHHS.
- b. Unless the employee is teleworking (see below), once an employee begins taking paid sick leave under the FFCRA for one of the five reasons listed above, they must continue to take paid sick leave each day until they 1) exhaust the paid sick leave, or 2) no longer have a qualifying reason for taking paid sick leave. This limit is imposed because if an employee is sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep the employee from spreading the virus to others.

Employees working at their usual worksite can be allowed to take paid sick leave or expanded FMLA leave on an intermittent basis to care for their child whose school or day care is closed. Intermittent leave for this purpose is at the discretion of the employer, as is the decision whether to allow intermittent leave for this purpose in partial day increments or full day increments.

2. Employees who are teleworking

If an employee is teleworking, an employer is not required to allow the employee to take the statutory paid sick leave or expanded FMLA leave on an intermittent basis, but the employer may choose to allow the employee to use intermittent leave.

Emergency Responders

To minimize the spread of the virus associated with COVID-19, the City of Auburn will be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA. Any questions regarding your status as an emergency responder should be directed to your Department Director.

The City of Auburn will exclude first responders from the act. This is necessary to ensure that appropriate Emergency Responder staffing levels are maintained for the safety of our City. However, the City must also ensure that Emergency Responders do not put other employees at risk if personally affected by COVID-19. Therefore, the following provision of the FFCRA will be extended to Emergency Responder Employees.

Paid Sick Time Benefit and Usage:

Full-time employees are entitled to 80 hours of paid sick on average over a 2-week period (non-intermittent).

Compensation for paid sick time will be calculated at the employee's regular pay rate for employees using paid sick leave for the following:

- a. The employee is subject to a quarantine or isolation order related to COVID-19.
- b. The employee has been advised by a health care provider to self-quarantine due to COVID-19.
- c. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.