

Families First Coronavirus Response Act Flow Decision Tree (Effective April 2, 2020)

1. Does the employer employ fewer than 500 employees?

-If yes, go to step 2.
-If no, then none of the new laws apply.
2. Is the employee a “health care provider” or “emergency responder”?

-If yes, then the new laws may not apply depending on the definitions of those terms, due to be defined April 2, 2020, by the DOL.
-If no, then go to step 3.
3. Does the employer employ fewer than 50 employees?

-If yes, to step 4.
-If no, go to step 5.
4. If the business employs fewer than 50 employees, will the requirement of additional emergency leave or expanded paid FMLA leave “jeopardize the viability of the business as a going concern?”

-If yes, the new laws may not apply (check with a lawyer before proceeding, as this is a highly technical issue).
-If no, go to step 6.
5. Has the employer posted notices about the Families First Coronavirus Response Act in conspicuous employee gathering places?

-If yes, go to step 6.
-If no, please do so within seven days of the posters release date and go to step 6.

Emergency Paid Sick Leave Act (provides 2 weeks of paid leave)

6. Is the employee unable to work or telework due to a need for leave for one of the following six reasons (note: Certification is not listed as a prerequisite to obtaining leave):
 - (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 subject to a quarantine order or has been advised to self-quarantine.

- (5) The employee is caring for a son or daughter, and the school has been closed, or child care is unavailable, due to COVID-19.
- (6) The employee is experiencing symptoms similar to COVID-19 specified by the Secretary of HHS.

-If yes, go to step 7.

-If no, then no emergency leave or expanded FMLA leave is due.

7. Is one of the reasons listed above 6(1), 6(2), 6(3)?

-If yes, then for full-time employees, pay the employee 80 hours of pay at the employee's regular rate of pay, not to exceed \$511 per day (\$5,110 total). For part-time employees, pay the employee the average number of hours the employee works over a regular 2-week period of time. In either case, you may not require that the employee find a replacement employee. Nor may you require that the employee uses other leave first. Go to step 9.

-If no, then go to step 8.

8. Is one of the reasons listed above 6(4), 6(5), 6(6)?

-If yes, then for full-time employees, pay the employee 80 hours of pay at 2/3 of the employee's regular rate of pay, not to exceed \$200 per day (\$2,000 total). For part-time employees, pay the employee 2/3 the average number of hours the employee works over a regular 2-week period of time. In either case, you may not require that the employee find a replacement employee. Nor may you require that the employee uses other leave first. Go to step 9.

-If no, then go back to step 6, as the answer to this question cannot be "no" if you answered question six "yes" and question seven "no."

Go to step 9.

Emergency FMLA Expansion Act (provides 2 weeks unpaid and 10 weeks of paid leave)

9. Has the employee worked for the employer for at least 30 calendar days?

-If yes, go to step 10.

-If no, then the employee is ineligible for leave under this new law.

10. Is the employee unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee 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? *Note*, "Public health emergency" means a federal, state, or local COVID-19 emergency. "Child care provider" means a provider who receives compensation for providing child care services on a regular basis.

-If yes, go to step 11.

-If no, then the employee is ineligible for leave under this new law.

11. The employee is eligible for expanded FMLA Leave on the following terms:

-The first 10 days may consist of unpaid leave (and run concurrent with the paid Emergency Paid Sick Leave Act).

-An employee may elect to substitute accrued “vacation leave, personal leave, or medical or sick leave.”

-The remaining period FMLA period (74 days) is to be paid to employee at 2/3 employee’s regular rate of pay. To calculate the regular rate of pay for part-time employees, employers are to average “the number of hours the employee would otherwise be normally scheduled to work” looking back at the six-month period prior to the request for leave or, if the employee did not work six months, then a reasonable expected average. In no event shall paid leave exceed \$200 per day and \$10,000 in the aggregate.

-Go to Step 12.

12. Does the employer employ fewer than 25 employees?

-If yes, then go to Step 13.

-If no, then the employee may not have full job restoration rights if the employer can meet a variety of factors. Have a lawyer look at Section 104(d).

13. Restore the employee to his/her job at the end of the FMLA period.