

# FFCRA Webinar – Q&A

**THANK YOU FOR ATTENDING OUR WEBINAR. PLEASE SEE BELOW FOR ANSWERS TO QUESTIONS ASKED DURING THE WEBINAR.**

**Question:**

As it relates to delaying start dates and withdrawing job offers, does this apply to someone who completed 2 hours of training and completed all hire paperwork but then could not report the next day due to their spouse experiencing symptoms. Should we delay his start date or are we legally allowed to just withdraw the offer?

**Answer:**

I would suggest you delay the start date since the worker is formally an employee.

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**Question:**

If we relax our work at home requirements can we require someone to work from home as much as possible instead of taking leave?

**Answer:**

Yes, you can set the terms and conditions of your work environment. You can enforce hours and new requirements work at home force. Please see the Work from Home agreement under our Covid-19 Resource Center.

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**Question:**

On the tax credits – do we not get back the employer share of the payroll taxes due on the leave amounts?

**Answer:**

If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.

If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.

Equivalent child care leave and sick leave credit amounts are available to self-employed individuals under similar circumstances. These credits will be claimed on their income tax return and will reduce estimated tax payments.

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**Question:**

Can an employer deny FMLA leave if the child is 17/18 years old and is known to stay at home by themselves already?

**Answer:**

The statute applies to children 18 and under. The hope is workers with teenage children who already stay home by themselves will not try to take advantage of the law. That said, you must proceed cautiously since there is a retaliation provision.

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**Question:**

Can employees with the virus take 5 days per triggering events 1 – 3... once the employee is better, can they immediately roll into payout via 4 – 6 triggering events assuming the employee has a child at home (for example)?

**Answer:**

Yes, if they met the requirements, we do not see why not.

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**Question:**

Can the FMLA and sick time be used intermittently? If an employee has child care three days a week and only needs time off here and there can it be spread out?

**Answer:**

There is no guidance on this. Because this is simply an expansion of the FMLA, I would assume that yes an employee could use the paid FMLA leave intermittently.

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**Question:**

Can we layoff some people and furlough others?

**Answer:**

Yes. Just remain consistent and equal in your decisions.

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**Question:**

Do all of these regulations apply if a business is required to shut down?

**Answer:**

It is our interpretation that if a business is shut down, there is no need for leave.

**Question:**

Does the 10 days break down into hours? We have shifts that only work (4) 10 hour days, and other shifts that work (5) 8 hour days.

**Answer:**

This is unknown. We hope the regulations will provide guidance.

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**Question:**

Does the paid sick leave cover employees if they choose to stay home to self-quarantine, or have a weakened immune system, or if they have cold symptoms not associated with COVID-19?

**Answer:**

Generally no, but the paid sick time requirements calls for paid leave when “the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.”

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**Question:**

Does this apply to salaried employees as well?

**Answer:**

Yes.

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**Question:**

Employers with over 500 employees receive no government assistance?

**Answer:**

Not under this law.

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**Question:**

For the paid sick time requirements... paragraph 1 – “The employee is subject to a Federal, State and local quarantine.” Does that mean shelter in place scenarios similar to what’s going on in California right now.

**Answer:**

No, we believe it only applies to individual orders for employees who are experiencing symptoms or have been diagnosed. We hope the regulations shed some more light on this.

**Question:**

How do we determine if someone is “seeking a medical diagnosis?” What is keeping someone from saying that they have symptoms even when they don’t?

**Answer:**

We await guidance on required forms.

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**Question:**

How does this work for commission-based employees? Sales employees for car dealerships for example being sent home? Should they be filing for unemployment? Best practice?

**Answer:**

If a car salesman is sent home, he or she should apply for unemployment. We are hoping the DOL provides guidance on pay amount for commissioned employees.

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**Question:**

How long do they have to get said diagnosis?

**Answer:**

We await guidance on required forms. The law sunsets on December 31, 2020.

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**Question:**

Is it true that employees who cease employment between the time the law was enacted and the effective date will not be subject to this law?

**Answer:**

As it currently stands, that is our understanding. We are hoping the regs shed more light.

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**Question:**

If a state closes bars, in dining restaurants, etc. and there is no business for our market sales rep so as a company we ask them to stay home, would this apply to #1 under paid sick leave?

**Answer:**

As for now, we do not believe it would. We believe this has to be an individual quarantine related to the disease or symptoms.

**Question:**

If an employee has just used their FMLA in full and its within the 12 months can they apply for this expansion or FMLA again?

**Answer:**

It is our understanding that the employee would not have new entitlement to FMLA leave.

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**Question:**

If an employer has a decline in business, can the employer stop salaried employees from working and STOP paying them until normal business levels resume?

**Answer:**

If a salaried, exempt employee works any time during a workweek, he or she must be paid the entire salary for the workweek. If they do not work any time during a workweek, they do not have to be paid.

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**Question:**

If someone was on FMLA due to a different issue and didn't use their full 12 weeks, does this apply still or do we need to write up new FMLA paperwork and use the rest of their 12 weeks since it has been within 12 months?

**Answer:**

Would still apply. Paperwork requirements are not yet clear.

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**Question:**

If the employee has not been restricted by her doctor but has decided that because of her current condition and medications that she is taking causes her immune system to be low and so she does not feel like she needs to be exposed to anyone, does any of this apply to her?

**Answer:**

Under that circumstance, no, it does not appear she would meet any of the eligibility requirements.

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**Question:**

If the employee is unable to telework due to the nature of their job, does this apply?

**Answer:**

Yes, if the employee met the other requirements.

**Question:**

If we choose to make this effective prior to 4/2/2020, does that disqualify us from the employer tax credits?

**Answer:**

As the law currently stands, and prior to receiving regulations, yes, we believe that is true.

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**Question:**

If you had an employee on FMLA due to Coronavirus prior to enactment, does this restart it effective April 2<sup>nd</sup>?

**Answer:**

Our answer would be no. 12 weeks total.

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**Question:**

Is there an effective “dispute” to the employee’s inability to work while child is home? For example, a spouse is also home... or daycare/childcare options are available to the employee (assume childcare is not provided by the employer.)

**Answer:**

There could be, yes. We await guidance on necessary forms, and whether the time must be split between husband and wife.

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**Question:**

On the requirement to post the notice – since we are closed, do we need to email the notice to all employees?

**Answer:**

We do not believe so.

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**Question:**

So basically someone can say they are sick and seeking a diagnosis they can get paid for these 10 days?

**Answer:**

We await guidance on required forms. The law sunsets on December 31, 2020.

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**Question:**

So can you still pay the mandated sick leave in a week where they are working less than expectation?

**Answer:**

Not unless they meet the eligibility requirements. You can pay your regular sick leave.

**Question:**

So for example, if schools are back up on April 7<sup>th</sup> and an employee didn't have COVID-19, they are only eligible for pay from 4/2-4/6?

**Answer:**

If you are referring an employee using paid sick leave for childcare, then yes, if the employee no longer has to care for a child, they would only be eligible for pay from 4/2-4/6 unless they qualify under any of the other options.

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**Question:**

The act does not seem to define what a "full time employee" is. Would it be an employee who works at least 40 hours?

**Answer:**

You should generally use your company's definition of what is full time.

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**Question:**

The act is effective 4/2/2020; What about a situation that occurs prior to that date? What if you have an employee who was tested for the virus on 3/16 and has been out of work for 5 days? Does the Act apply in that case because it is prior to the effective date?

**Answer:**

Based on our current reading, no it does not. You should proceed under your normal leave policies, the FMLA and the ADA.

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**Question:**

The first reason is vague. "Related to COVID-19." Does that mean any reason they choose to stay home?

**Answer:**

We agree. We hope the regulations shed some light on this.

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**Question:**

This question will relate to sick leave. How does the employer determine the eligibility of our employees for lack of care for school or childcare?

**Answer:**

This answer is not yet clear. There has been no guidance about paperwork employees must submit on the childcare issue.

**Question:**

We are conducting layoffs. We have an employee who currently is unavailable due to “child care” – what should we do?

**Answer:**

Remain aware of other employment laws. Ensure that all employees are being treated consistently and equally. If that employee is in a grouping of people otherwise being laid off, you are likely fine to proceed with a layoff.

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**Question:**

We closed our outpatient office Mar 23 - Apr 3. Since the law is not effective until Apr 2. So I don't need to pay the employees the 2 weeks sick leave for this period and cannot get reimbursed from payroll tax credits.

**Answer:**

I do not believe this goes into effect until April 2. With that said, I do not think a simple office closure would trigger any of the eligibility requirements.

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**Question:**

What documentation will be required from employees wishing to take advantage of these provisions? Will both parents be allowed to stay home and both receive these benefits/pays?

**Answer:**

These are both outstanding questions we hope the regulations will address.

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**Question:**

What happens if an employee is out to care for someone who has Covid-19 and then contracts it themselves? How long would they be eligible for sick leave?

**Answer:**

No more than ten days total if just sick leave. If they are caring for a child home from school (who also happens to have COVID, the expanded FMLA leave may kick in.

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**Question:**

What if a new salary employee has not yet started to accrue paid time off?

**Answer:**

Under the paid sick leave act, this does not matter. The new employee would still be entitled to paid sick leave if he or she met the eligibility requirements.

**Question:**

What if an employee has not been restricted from going to work but is restricted from doing a part of their job? No official order to quarantine. If she cannot do the job restricted by her doctor which is an essential job duty, then we told her to remain home. Is she eligible for any of this?

**Answer:**

Not the expanded FMLA paid leave. But possibly the sick leave if she meets the requirements.

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**Question:**

What if they were in a position that did not accrue sick leave?

**Answer:**

They are still eligible for this emergency sick leave.

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**Question:**

What if they were in a position that did not accrue sick leave? Would the FMLA sick leave payment still have to be paid?

**Answer:**

Keep in mind the FMLA expansion and the sick leave payment are separate items. Under FMLA, if the employee has been on the payroll for 30 days, and meets the requirements, yes, the employee must be paid. No such time on the payroll is necessary for the paid sick leave.