

## **Families First Coronavirus Response Act: What Municipal Employers Need to Know**

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The Families First Coronavirus Response Act (FFCRA) takes effect on April 1, 2020. It contains employment provisions that have two primary goals: increasing an employee's right to take protected leave under the Family and Medical Leave Act (FMLA) and requiring employers to provide paid leave in certain circumstances. Below are questions and answers that may help you navigate FFCRA requirements.

### **Does the FFCRA apply to municipalities?**

Yes, the paid sick leave and extended FMLA leave provisions apply to most governmental entities, including municipalities.

### **Are municipalities eligible for the tax credits to pay for the leave?**

No, governmental entities are not eligible for tax credits.

### **When are the leave requirements effective?**

Leave may be taken under the FFCRA between April 1, 2020 and December 31, 2020.

### **My city already has a generous leave policy. Is it required to offer this additional leave?**

Yes, the FFCRA leave must be given in addition to the ordinary leave policies of the municipality.

### **Which employees qualify for paid sick leave?**

All employees, except emergency responders, are eligible for sick leave if they are not able to telework. Independent contractors under the Fair Labor Standards Act are not eligible. Independent contractors receive a Form 1099 to report their compensation.

### **What are the conditions for receiving sick leave?**

An employee is eligible if (a) the employee is in federal, state, or local quarantine or isolation, (b) a health care provider has advised the employee to self-quarantine, (c) the employee is caring for an individual described above, (d) the employee is experience symptoms of COVID-19 and is seeking a medical diagnosis, or (e) the employee is caring for his or her child if the child's school or child care facility has closed due to COVID-19.

### **If an employee has two eligibility events, is the employee entitled to a second round of sick leave?**

No, the statute requires only 80 hours of paid sick leave.

**How many hours of sick leave is an employee entitled to receive?**

Full-time employees are entitled to receive pay for 80 hours. Employees who work less than full time receive pay for the hours they normally work in a two-week period. If an employee works variable hours, the employee is paid for the average hours that he or she has worked over the prior six months (or the entire employment period if shorter). For example, if an employee worked 960 in the prior six months, the employee would be paid for 73.8 hours ( $960/26 * 2$ ).

**How is a person's pay calculated?**

An employee on sick leave is paid by multiplying the hours described above by his or her regular rate of pay under the Fair Labor Standards Act, which does not include overtime. Salaried employees are paid according to their normal weekly pay.

**Are there limits on the amount of sick pay?**

Yes, and the limit depends on the reason for the sick leave. If the employee is out due to a quarantine or isolation order, self-quarantine on the recommendation of a health provider, or is experiencing symptoms and seeking a diagnosis, the maximum sick pay is \$511 per day for 10 days. If the leave is due to child care or caring for a person with COVID-19, the maximum sick pay is the lesser of \$200 per day or  $2/3$  of the employee's regular rate of pay multiplied by the employee's hours.

**Which employees qualify for paid FMLA leave?**

After 30 days of employment, all employees except emergency responders are eligible for sick leave if they are not able to telework. Independent contractors are not eligible.

**What are the conditions for receiving paid FMLA leave?**

An employee who is unable to work due to caring for his or her child if the child's school or child care facility has closed due to COVID-19 is eligible.

**For how many weeks is the employee entitled to paid FMLA leave?**

The employee is entitled to paid FMLA leave for 10 weeks, beginning on the third week of leave. During the first two weeks, the employee can either claim sick leave or use his or her own PTO, as elected by the employee.

**How many hours of paid FMLA is the employee entitled to receive?**

The employee's hours of paid FMLA leave are calculated by looking back at the employee's hours over the prior six months and determining the average hours worked per week. The employee receives pay based on the weekly average. This may mean that an employee receives pay for more than 40 hours per week, but there is no overtime increase.

**How is the rate of pay calculated?**

The rate of pay is calculated in the same manner as under the sick pay provisions.

**Are there limits on the amount of paid FMLA leave?**

Yes, the maximum sick pay is the lesser of \$200 per day or 2/3 of the employee’s regular rate of pay multiplied by the employee’s hours.

**If an employee takes 12 weeks of FMLA leave, is the employee entitled to additional FMLA leave during this FMLA leave period?**

No, the FFCRA added another condition for FMLA leave but did not extend the time available for leave.

**Who is considered an “emergency responder”?**

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.

**Where can I find additional information on the FFCRA?**

The Department of Labor offers guidance through the following website:

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

**What is the interplay between the FFCRA and HB1647?**

The FFCRA is a federal law that imposes certain obligations on municipal employers, as discussed above. HB1647, by contrast, is a state law that provides certain protection to municipal employers from being deemed to have unlawfully permitted paid administrative leave during the declared State of Emergency declared by the Governor. In short, paid administrative leave that ordinarily might be deemed to be an inappropriate donation or gift would be deemed acceptable during the State of Emergency.