TO: Indiana Public Libraries

FROM: Indiana State Library

RE: Families First Coronavirus Response Act (FFCRA)

DATE: March 31, 2020

**OVERVIEW OF FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)**

The [Families First Coronavirus Response Act](https://www.congress.gov/bill/116th-congress/house-bill/6201) (FFCRA or Act) requires certain employers to provide their employees with paid sick leave under the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act for specified reasons related to COVID-19. This document summarizes relevant provisions of the legislation, which was signed into law on March 18, 2020 and can be found at <https://www.congress.gov/bill/116th-congress/house-bill/6201>.

FFCRA reimburses businesses with fewer than 500 employees for the cost of providing paid COVID-19 sick leave to employees by giving the business dollar for dollar tax refunds for the amount spent. The law applies to public libraries because it extends new COVID-19 related sick leave to local government entities even though local government entities are specifically excluded from the tax refund provisions. An employee can use the paid sick leave for the employee’s own health needs or to care for family members, including caring for a child who must stay home due to COVID-19 school closure. The law seeks to improve public health outcomes by ensuring that workers are not forced to choose between their paychecks and the public health measures needed to combat the coronavirus.

Typically, the Family Medical Leave Act (FMLA) leave provisions do not involve a pay requirement and apply to employers with over 50 employees. However, under FFCRA, the COVID-19 related leave provisions apply to employers who employ fewer than 500 people. Many small employers, who were not previously subject to FMLA if they had fewer than 50 employees, are now subject to the newly expanded emergency FFCRA/FMLA provisions.

FFCRA does not create an obligation for employers to pay employees who are not able to work because the employer has closed the workplace whether due to lack of business or in compliance with a Federal, State, or local directive. The employee may, however, be eligible for unemployment insurance benefits in such situations.

As libraries consider new policies to address the current public health crisis, the FFCRA provisions described below can be viewed as one approach to employee compensation that Congress has deemed reasonable. The new federal requirements, while not a model for local policies, can provide additional context to those discussions.

This document is intended to serve as a general summary of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Act contained in FFCRA. You must consult with your library’s attorney to determine the impact of these laws on your specific library. This summary doesn’t attempt to take into account any details particular to your local situation, such as whether your employees participate in a collective bargaining agreement.

**LIMITED TIME PERIOD**

FFCRA takes effect April 1, 2020. It only applies to leave taken between April 1, 2020 and December 31, 2020. It does not apply retroactively.

**COVERED EMPLOYERS**

FFCRA applies to private employers with fewer than 500 employees and to public agencies (local governments and political subdivisions such as libraries) that employ one or more employees.

The Secretary of Labor may issue regulations to exempt small businesses with fewer than 50 employees from the requirement to provide leave due to school closure or child care unavailability under either the Emergency Paid Sick Leave Act or the Emergency FMLA Expansion Act if the requirement would jeopardize the viability of the business as an ongoing concern. As of the date this memo was written, such regulations have not yet been issued. If an exemption is adopted, it isn’t clear whether political subdivisions, including libraries, will qualify for the exemption.

**COVERED EMPLOYEES**

Paid sick leave applies to all of a covered employer’s employees. Expanded family and medical leave applies only to employees who have worked for an employer for at least 30 days (meaning the employee has been on the employer’s payroll for at least 30 calendar days prior to starting the leave).

**SUMMARY OF MAIN PROVISIONS**

All employees of a covered employer are allowed two weeks of paid sick leave, in addition to any other sick leave accrued under the employer’s regular personnel policies, if the employee is unable to work for one of the following reasons:

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 related to COVID-19.
3. The employee has coronavirus symptoms and is seeking a medical diagnosis.
4. The employee needs to care for someone who is subject to a quarantine or isolation order or who has been advised by a health care provider to self-quarantine due to COVID-19 symptoms or diagnosis.
5. The employee needs to care for a child (under 18) whose school or care provider is closed or unavailable for reasons related to COVID-19.
6. The Secretary of Health and Human Services in consultation with the Secretaries of Labor and Treasury may identify other similar conditions that merit inclusion.

Under items 1 through 3, the employee is unable to work due to the employee’s own health needs. In these situations, the employee is entitled to the employee’s regular rate (or minimum wage if that is higher) for the hours the employee would have otherwise worked up to 80 hours. The amount of payment an employee may receive when unable to work for the reasons listed in items 1 through 3 is capped at a maximum of $511 per day and $5,110 for 80 hours.

Under items 4 through 6 the individual is unable to work because of a need to care for a family member who is impacted by COVID-19. In these situations, the employee is entitled to two-thirds of the employee’s regular rate of pay (or two-thirds of minimum wage if that is higher) for the hours the employee would have otherwise worked up to 80 hours. The amount of payment under these items is capped at $200 per day and $2,000 for 80 hours.

Employees who have worked for an employer for at least 30 days are entitled to an additional 10 weeks of expanded family and medical leave for caring for a child (under 18) whose school or care provider is closed

or unavailable for reasons related to COVID-19. The employee is entitled to two-thirds of the employee’s regular rate of pay (or two-thirds of minimum wage if that is higher) for the hours the employee would have otherwise worked during the 10-week period. An employee who takes extended leave under this provision is entitled to a maximum of 12 weeks of leave (the first two weeks under paid sick leave and the remaining 10 weeks under expanded family and medical leave). The amount of payment for the entire 12 weeks may not exceed $200 per day and $12,000 in total.

**HOW TO DETERMINE NUMBER OF HOURS TO PAY EMPLOYEE PER WEEK**

If an employee works part-time or works full-time but with a schedule that varies, the employee is entitled to be paid for the average number of hours they would usually work in a two-week period. The employer may use a six-month average to calculate the employee’s average daily hours. If the employee has not yet completed six months of employment the employer may use the hours agreed to upon hiring the employee or calculate average hours per day worked for the length of time the employee has been employed.

**OTHER LIMITATIONS**

Paid sick leave does not carry over year to year and an employee is not entitled to reimbursement for unused leave. An employee only gets 80 hours of paid sick leave even if the employee meets more than one qualifying reason to take paid leave. Paid sick leave is capped at 80 hours for any combination of qualifying reasons.

**EMPLOYER REIMBURSEMENT VIA TAX CREDIT**

FFCRA promises to reimburse private employers “dollar for dollar” for all wages paid for employees who take leave for a reason permitted under the Act as well as any amounts paid to maintain health insurance coverage while the employee is on leave. However, political subdivisions (including public libraries) are exempted from the reimbursement, which takes the form of a tax credit.

**ENFORCEMENT**

The U.S. Department of Labor’s Wage and Hour Division (WHD) has the authority to investigate and enforce FFCRA compliance. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD. For 30 days after the Act takes effect there will be a temporary period of non-enforcement provided the employer acted reasonably and in good faith.

Beginning April 1, 2020, employers must post a clearly visible [notice of FFCRA’s provisions](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf) in the workplace. If an employer’s workforce is primarily working from home at this time, the employer may satisfy this requirement for the time being by emailing or direct mailing this notice to employees or posting this notice on an employee information website. The Department of Labor provides FAQs regarding poster placement [here](https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions).

**NO RETALIATION**

Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding related to the Act.

**ADDITIONAL RESOURCES**

The U.S. Department of Labor webpage [COVID-19 and the American Workplace](https://www.dol.gov/agencies/whd/pandemic) contains a number of helpful resources, including:

* A fact sheet for employers - [Families First Coronavirus Response Act: Employer Paid Leave Requirements](https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave)
* [Families First Coronavirus Response Act: Questions and Answers](https://www.dol.gov/agencies/whd/pandemic/ffcra-questions)
* [Poster with Notice of Employee Rights Under FFCRA](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)
* [FFCRA Notice - FAQ](https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions)

[The New Leave Entitlements Under FFCRA - Issues Unique to the Public Sector: COVID-19 Resource](https://www.natlawreview.com/article/new-leave-entitlements-under-ffcra-issues-unique-to-public-sector-covid-19-resource), National Law Review, March 23, 2020

**Types of Leave Available Under FFCRA**

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| Qualifying EE\* | Type of Leave | Qualifying Reason | Length | Rate |
| All EEs | Paid Sick Leave | EE is subject to Federal, State, or Local quarantine or isolation order related to COVID-19 | 2 weeks (up to 80 hours) | Full rate |
| All EEs | Paid Sick Leave | EE advised by Health Care Provider to self- quarantine related to COVID-19 | 2 weeks (up to 80 hours) | Full rate |
| All EEs | Paid Sick Leave | EE has CV symptoms & seeking medical diagnosis | 2 weeks (up to 80 hours) | Full rate |
| All EEs | Paid Sick Leave | Caring for someone who is:-subject to quarantine or isolation order; or -advised by HCP to self-quarantine related to COVID-19 | 2 weeks (up to 80 hours) | 2/3 Rate |
| All EEs | Paid Sick Leave | Caring for child (under 18) whose school or care provider is closed or unavailable b/c of COVID-19 | 2 weeks (up to 80 hours) | 2/3 Rate |
| All EEs | Paid Sick Leave | Other similar situation as identified by the Secretary of Health and Human Services  | 2 weeks (up to 80 hours) | 2/3 Rate |
| EE who has been employed for at least 30 days | Expanded Family and Medical Leave | Unable to work because caring for a child (under 18) whose school or care provider is closed or unavailable due to COVID-19 | Additional 10 weeks (for a total of 12 weeks including first 2 weeks of paid sick leave). | 2/3 Rate |

\* EE is short for employee.