



# Families First Coronavirus Response Act

## A Summary for Tennessee Municipalities

Melissa Ashburn, MTAS Legal Consultant

March 24, 2020



Municipal Technical Advisory Service  
INSTITUTE *for* PUBLIC SERVICE

# Families First Coronavirus Response Act

---

Melissa Ashburn, MTAS Legal Consultant

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act to assist employers and employees during the pandemic. Currently, there is no provision in the law to reimburse local governments for the mandated leave.

The Act may be viewed here: <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

[Scroll down to “DIVISION C: EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT” to see the full text for FMLA amendment]

The Act amends the FMLA to provide up to 12 weeks of paid leave to employees for a qualifying need related to a public health emergency, i.e. COVID-19. The law:

- Takes effect on April 2, 2020 and ends on December 31, 2020.
- Applies to employers with “fewer than 500 employees” and defines eligible employee as one who has worked for at least 30 calendar days.
- Applies when there is a qualifying need related to a public health emergency, with respect to leave, meaning the employee is unable to work (or telework) due to a need to care for his or her son or daughter under 18 if the school or place of care has been closed or the childcare provider is unavailable due to a public health emergency.
- Authorizes the Secretary of Labor to issue regulations that exempt small businesses with fewer than 50 employees from the paid leave requirements, if “the imposition of such requirements would jeopardize the viability of the business as a going concern.” The Secretary’s regulations may also exclude certain health care providers and emergency responders from the definition of eligible employee.
- Allows the initial ten days of emergency FMLA leave to be unpaid. An employee may elect to use any accrued leave for this initial ten-day period. Leave after the initial ten-day period should be calculated at not less than two-thirds of an employee’s regular rate of pay at the hours the employee would normally be scheduled to work.

- Limits the amount required for paid emergency FMLA leave to \$200/day or \$10,000 in the aggregate.
- Provides that the restoration requirement shall not apply to an employer with fewer than 25 employees if certain circumstances are met.
- Allows an employer of an employee who is a health care provider or emergency responder to exclude such employee from the emergency leave requirements.

The law also enacts the Emergency Paid Sick Leave Act which would permit employees to use sick leave related to the Coronavirus. The Act may be viewed here: <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

[Scroll down to “DIVISION E—EMERGENCY PAID SICK LEAVE ACT”]

The Emergency Paid Sick Leave Act goes further than the FMLA amendments, requiring full pay in some circumstances and applying to more employees:

- As with the FMLA expansion, this applies to employers with fewer than 500 employees. The Act includes local governments as it defines a covered employer to include a public agency or any other entity that is not a private entity and employs one or more employees.
- Applies to all full-time employees (with limited exceptions) regardless of their length of employment, who are entitled to take 80 hours paid sick leave immediately. Part-time employees would get a pro-rated amount.
- New sick leave amounts are in addition to and not in lieu of any employer-provided paid sick leave benefits and employers must permit employees to use Coronavirus-related sick leave before other sick leave.
- These amounts cannot be carried over into the following year, nor are they paid out at termination.
- The Department of Labor is directed to provide guidance on calculations of the paid sick leave no later than 15 days after the law was signed. The Act directs that paid sick time shall not exceed \$511/day or \$5,110 in the aggregate for a quarantined employee or above or \$200 per day and \$2,000 in the aggregate for employees caring for family

members or absent due to a condition that is substantially similar to COVID-19.

- Employees are entitled to such leave in these circumstances:

An employee is unable to work (or telework) due to a need for leave because (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 quarantine due to concerns related to COVID-19, (3) the employee is experiencing symptoms of COVID-19 and seeking a diagnosis, (4) the employee is caring for an individual who is subject to a quarantine order or has been advised to quarantine as outlined above, (5) the employee is caring for a son or daughter if the school or place of care has closed or is unavailable due to COVID-19, or (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor.

- Employers must post a notice related to this section in a conspicuous place in the workplace. A model notice will be provided by the Department of Labor within 7 days of enactment of this bill.
- The paid sick time shall cease beginning with the employee's next scheduled work shift immediately following the termination of the need for paid sick time.
- The sick time shall be available for immediate use regardless of how long the employee has been employed.
- The law prohibits an employer from requiring an employee to use other paid leave provided by the employer before the employee uses the paid sick time under this Act.
- The law specifies it is unlawful to discharge, discipline, or in any manner discriminate against an employee for taking the sick leave or filing a complaint, instituting suit, or testifying in a proceeding under or related to the Act, and a violation of the Act is considered a failure to pay minimum wages in violation of the FLSA.

This is the Department of Labor's website providing guidance on this Act:  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

Some direction regarding this leave from their website:

## Qualifying Reasons for Leave:

Under the FFCRA, an employee qualifies for expanded family and medical leave if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family and medical leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

## Duration of Leave:

**For reasons (1)-(4) and (6):** A full-time employee is eligible for 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

**For reason (5):** A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical leave) at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

## Calculation of Pay:[\[3\]](#)

**For leave reasons (1), (2), or (3):** employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

**For leave reasons (4) or (6):** employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

**For leave reason (5):** employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period).[\[4\]](#)

---

[3] Paid sick time provided under this Act does not carryover from one year to the next. Employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement, or other separation from employment.

[4] An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave under this section.



Municipal Technical Advisory Service  
INSTITUTE *for* PUBLIC SERVICE

[mtas.tennessee.edu](https://mtas.tennessee.edu)