

# Covid-19 Guidance for Employees and Businesses

The IRS and Department of Labor are updating information constantly. Make sure that you stay on top of all the recent changes that are available. Refer the IRS website for updates. Below are some valuable websites to check for current information.

<https://www.irs.gov/coronavirus>

Department of Labor's FFCRA FAQ <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Internal Revenue Service's FFCRA Tax Credits FAQ <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

Internal Revenue Service's Employee Retention Credit <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

**\*\* CheckMark is unable to advise on these topics as they are outside the scope of our expertise. We encourage you to follow the links above as well as consult with your tax professional or financial advisor.**

**\*\* Additionally, several state and local sick pay laws as well as State Paid Family Leave Programs have been updated to include COVID-19 guidelines. Refer to your state's Department of Labor website for update information.**

- **Families First Coronavirus Response Act (FFCRA)**

- Qualifying reasons for leave related to Covid-19. If an employee does NOT qualify for one of the following 6 reasons, then FFCRA pay cannot be used. Each employee must provide the required documentation (see requirements below)
  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-quarantined as described in #2
  5. Is caring for his or her own child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons
  6. Is experiencing any other substantially-similar conditioned specified by the US Department of Health and Human Services
- FFCRA goes into effect April 1, 2020 and expires December 31, 2020.
- Eligible Employees
  - Employers with fewer than 500 employees
  - Employers with fewer than 50 employees may qualify for an exemption
  - Employee must be employees for at least 30 days prior to requesting expanded family and medical leave for COVID-19. Employees working less than 30 days do

- qualify for paid sick leave for up to 80 hours or equivalent for part-time employees
  - Employees are not eligible for FFCRA that have had their hours reduced, been laid-off or furloughed.
  - Employees are not eligible for FFCRA if their workplace is closed due to federal, state, or local stay-at-home orders or due to business slowdowns.
- Summary of the FFCRA
  - An employee may be eligible up to 2 weeks of **sick leave** (full pay for self (see #1, #2 OR #3 above) and 2/3 pay for family care (see #4, #5 OR #6 above)) for illness, quarantine or school closures.
  - An employee may also be eligible up to 12 weeks of **extended Family and Medical Leave Act (FMLA) for school closures** (10 days unpaid and then up to 10 weeks at 2/3 pay). The maximum amount an employee can claim in a 12 month period is 12 weeks FMLA. (see #5 above)
- Keys Items for Employers

The Families First Coronavirus Response Act (FFCRA) has gone into effect, requiring employers with under 500 employees to provide emergency sick time and family leave pay to employees who cannot work or telework due to a documented need related to COVID-19. Employers who do so are eligible for a fully equivalent tax credit or refund equal to the required sick leave paid, dollar for dollar. At the same time, under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, businesses may be eligible for tax credits, deferred tax payments, and/or loans through the Paycheck Protection Program (PPP) or other SBA loans.

**NOTE:** Please remember, you must continue to pay your employees as normal taking taxes and deductions out of their checks, but it's best to pay the sick pay on a separate check and categorize the pay as the FF-Sick pay. Please see "How to setup CheckMark Payroll for the FFCRA Sick Pay" document.

**NOTE:** The employer side of social security and Medicare need to also calculate as normal when creating checks for "FFCRA sick pay or extended family leave pay". Employers are allowed to use the employer side of the Medicare match when calculating the Tax Credit.

Companies will need to analyze what options will be best for their particular company. Some options would include retaining workers despite their not doing any (or less) work (with the risk of having to cover FFCRA leaves), furloughing workers with pay, furloughing employees without pay to seek unemployment, laying workers off to seek unemployment, applying for small business loans, or a combination of these options. New IRS and DOL guidance reveals there is a critical and complex interplay between the FFCRA and the CARES Act. Employers are not able to double dip and claim employee retention wages as a payroll tax credit on the Form 7200 and claim the same employees' wages under the Payroll Protection Program (PPP)

- Paid Sick Leave and FMLA expansion

- Generally, employers covered under this Act must provide employees up to 2 weeks of sick pay (80 hours for full-time employees or 2 week's equivalent for part-time employees).
  - Sick - 100% for qualifying reasons #1 - #3 (listed above) up to \$511 per day and \$5110 total
  - Sick - 2/3 pay for qualifying reasons #4 & #6 (listed above) up to \$200 per day and \$2000 total
  - Up to 12 weeks of Sick and Extended FMLA at 2/3 pay for reason #5 (listed above)
- Small Business Exemption – Employers with under 50 employees may claim an exemption from FFCRA if at least one of the following reasons is true
  - Providing leave would result in the small business's expenses and financial obligations to exceed the available revenue and cause the business to close
  - The absence of a key employee or employees would risk the financial health or operational capabilities of the business
  - There are not sufficient employees who are able, willing or qualified to operate at a minimal capacity
- Payroll Tax Credit
  - Applies to both Emergency Sick Pay and Emergency FMLA expansion due to COVID-19
  - Wages, employer match for Medicare and employer side of medical insurance premiums that have been paid for FFCRA can be claimed as a credit against the federal tax liability that is due on a payroll.  
**Note: There is no credit for the employer portion of OASDI tax, also known as social security tax.**  
**NOTE:** The employer side of social security and Medicare need to also calculate as normal when creating checks for "FFCRA sick pay or extended family leave pay". Employers are allowed to use the employer side of the Medicare match when calculating the Tax Credit.
  - A refund for amounts that exceed the available credit can be obtained by filing Form 7200.  
 Form: <https://www.irs.gov/pub/irs-pdf/f7200.pdf>  
 Instructions: <https://www.irs.gov/pub/irs-pdf/i7200.pdf>
  - Limits on what can be claimed are the same as the employee limits
  - If an employer files more than one Form 7200, keep in mind that Form 7200 is an accumulative amount for the quarter and any previously submitted amounts should be added on Line #6 of the form.
  - Employers may claim 50% of qualified wages paid to employees from March 13, 2020 to January 1, 2021 as employee retention wages. If you paid qualified employee retention wages between March 13, 2020 and March 31, 2020, you will include 50% of those wages together with 50% of any qualified wages paid during second quarter of 2020 on your

second quarter 941. **Do NOT include the credit on your first quarter 941 form.**

- Documentation and Guidance
  - Employers are required to post the Employee Rights poster or distribute electronically to employees  
[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)
  - Documentation Required to Substantiate Leave Payments – (From the IRS) An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if the employer receives written request for such leave from the employee. The employee should provide:
    1. The employee's name
    2. The date or dates for which the leave is requested
    3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason
    4. A statement that the employee is unable to work, including by means of telework, for such reason
  - Read the Questions and Answers document provided by the Department of Labor on administrating the FFCRA Leaves  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
  
- **The Coronavirus Aid, Relief, and Economic Security Act (CARES Act)**
  - The CARES Act provides an employer an alternative to Closures and Layoffs or Furloughs. There are several types of SBA loans that an employer may be eligible for. Please contact local banks in your area for assistance in setting up an SBA loan.  
  
<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>  
<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options>
  - Paycheck Protection Program (PPP) - The Small Business Administration (SBA) may provide loans up to \$10 million to pay employees and keep employees on payroll or pay for rent, mortgages, or existing debt could be forgiven, provided workers remained employed through the end of June.  
  
<https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp>
  - Small businesses with existing SBA loans **may** have up to 6 months of payments waived.
  - Businesses can defer tax payments without failure to deposit penalty for payments due after this law was signed into effect. IRS Notice 2020-22  
<https://www.irs.gov/pub/irs-drop/n-20-22.pdf>

- Refer to FAQs on Employee Retention Credit under the CARES Act  
<https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>