

From: [Ferrara Fiorenza News](#)
Subject: Clients and Friends Alert from Ferrara Fiorenza PC - Federal Legislation on Leave for Employees Affected by COVID-19 Enacted
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Federal Legislation on Leave for Employees Affected by COVID-19 Enacted

We previously informed you about a version of the “Families First Coronavirus Response Act” (FFCRA) that was initially passed by the House of Representatives. It was then significantly revised, given final approval by both the House and the Senate, and signed by the President. This is to update you on the final version.

Job Protected Leave

One of the biggest changes from the original bill involves the creation of a new category of leave under the Family and Medical Leave Act (FMLA) for COVID-19-related time off through the end of 2020. The original bill permitted this modified FMLA leave for the following reasons:

0. To adhere to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus;
1. To care for a family member who is adhering to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus; and
2. To care for a child of an employee if the child’s school or place of care has been closed, or the childcare provider is unavailable, due to the coronavirus.

The final bill only permits this modified leave for the third category listed above. The new law states that the leave is only available for employees who are “unable to work (or telework) due to a need for leave to care for the son or daughter of such employee if the school or place of care has been closed or the child care provider of such son or daughter is unavailable due to a public health emergency.”

This is a significant change because employees taking this leave are not only entitled to be reinstated to their jobs (with some exceptions) but they will also be paid for a substantial portion of the available leave.

Some of the other basic requirements of the amended FMLA law are summarized as follows:

- The definition of a “covered employer” for this type of FMLA leave is those with “fewer than 500” employees. All public employers are covered regardless of their size. In other words, unlike the 50 employee threshold required for FMLA compliance under pre-existing law, all employers will be subject to these legal mandates.
- Employees are eligible for this leave after being employed for at least 30 days.
- The first 10 days of COVID-19 leave is without pay. An employee may choose to use any accrued paid sick, personal or vacation leave. An employer may not require an employee to do this.
- After the first 10 days, employees must receive pay in an amount at least 2/3 of the employee’s regular pay rate OR pay for the hours the employee would have worked.

- Employers are required to return employees absent due to COVID-19 to work to their same or equivalent position. This does not apply to employers with fewer than 25 employees, if the position does not exist due to the COVID-19 emergency, and the employer makes reasonable efforts to restore the employee to an equivalent position. If no such position is available, the employer may contact the employee if an equivalent position becomes available later.

Paid Sick Leave

The FFCRA also provides 80 hours of paid sick time for full-time employees and prorated leave for part-timers. This applies to employers with fewer than 500 employees and government employers. Employees may be eligible for this leave no matter how long they have been employed. Leave is available for the following reasons:

- To self-quarantine following a COVID-19 diagnosis.
- To obtain a medical diagnosis or care when an employee is experiencing symptoms of COVID-19.
- As may be necessary to follow the recommendations of public officials or healthcare professionals precluding the employee from work as a health risk.
- To care for a self-quarantined family member who has been diagnosed with COVID-19 or who is experiencing symptoms and requires a diagnosis or care.
- To care for an individual under circumstances where a public official or health care provider determines that the family member must isolate from the community because of COVID-19 exposure risk.
- For the employee to care for their children if their school or daycare has been closed or if their childcare is no longer available due to COVID-19. In other words, this paid leave can be taken during the unpaid portion of the FMLA leave described above.

Leave based on the employee's own circumstances is paid at the employee's regular rate of pay. This is up to a maximum of \$511 per day and \$5,110 in the aggregate. Leave to care for another person may be paid at 2/3 of the employee's regular rate of pay. This is up to a maximum of \$200 per day and \$2,000 in the aggregate.

- An employee may choose to use paid sick time under this Act before using other paid leave provided by the employer. An employer may not require an employee to do this.
- The law also prohibits retaliation and discrimination.

There will be payroll tax credits to reimburse private sector employers for their cost of providing required paid sick leave and family leave under the Families First Coronavirus Response Act. The credits will not be available to public employers.

The U.S. Department of Labor will issue guidance and model notices to implement the provisions on leaves.

As we all know the COVID-19 pandemic is a fluid situation and response measures are changing almost on a daily basis. Stay tuned for updates as necessary and always feel free to contact us (using the information below) for immediate assistance.



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