

# The Families First Coronavirus Response Act (FFCRA)



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UNITED STATES DEPARTMENT OF LABOR

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# Family First Coronavirus Response Act (FFCRA)

- Signed into law **March 18, 2020**
  - Emergency Paid Sick Leave Act (EPSLA)
  - Emergency Family and Medical Leave Expansion Act (EFMLEA)
- Effective **April 1, 2020**
- Expires **December 31, 2020**
- Enforced by the U.S. Department of Labor Wage and Hour Division (WHD)



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# FFCRA Requirements

- Coverage
- Employee Eligibility
- Qualifying Reasons for Leave
- Number of Weeks and Hours of Leave Available
- Calculation of Pay



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# FFCRA–Employer Coverage

- Private Sector
  - Employers of fewer than 500 employees
  - Including not for profit employers
- Public Agencies
  - Regardless of the number of employees they employ



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# FFCRA–Counting Employees

- Employer does not count employees working outside the U.S., U.S. territories, or D.C.
- Full-time AND part-time employees are counted
- Employees who are working and on leave are counted
- Temporary employees who are jointly employed are counted
- Day laborers supplied by a temporary agency are counted
- Count is made when employee leave is initiated



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# FFCRA–Qualifying Reasons for Leave

An employee is entitled to take leave if the employee is unable to work or telework because the employee:

- Is subject to a federal, state, or local quarantine or isolation order related to COVID-19,
- Has been advised by a health care provider to self-quarantine related to COVID-19,
- Is experiencing COVID-19 symptoms and is seeking a medical diagnosis,



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# FFCRA–Qualifying Reasons for Leave (Continued)

*(Continued)* An employee is entitled to take leave if the employee is unable to work or telework because the employee:

- Is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine related to COVID-19,
- Is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons, or
- Is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services



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# FFCRA–Small Business Exemption

Applies to:

- Small businesses with fewer than 50 employees, AND
- Employee’s leave is to care for his or her child whose school or place of care is closed (or child care provider is unavailable), but only if
- Requirements of the FFCRA jeopardize business viability



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# FFCRA–Small Business Exemption: Employer Determines

No application process - exemption applies if employer determines:

- Leave would result in expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity
- Employee's absence would entail a substantial risk to the financial health or operational capabilities of the business because of the employee's specialized skills, knowledge of the business, or responsibilities; OR
- Insufficient employees able, willing, and qualified at time and place needed to perform labor or services provided by the employee, and these labor or services are needed for business to operate at a minimal capacity.



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# FFCRA–Exclusion of Health Care Providers and Emergency Responders

Employers may exclude employees who are either:

- Health Care Providers, or
- Emergency Responders



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# FFCRA–Exclusion of Health Care Providers

Health Care Provider is:

Anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health provider, any facility that performs laboratory or medical testing, pharmacy, OR any similar institution, employer, or entity.



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# FFCRA–Exclusion of Emergency Responders

Emergency Responder is:

- Anyone necessary for transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19.
- Includes 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.



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# FFCRA–Employer Notice Requirement

- Poster must be conspicuously posted, may be distributed online, posted on employer website, directly mailed or e-mailed to employees
  - Does *not* have to be visible to job applicants
- DOL Spanish and English FFCRA posters available online at [www.dol.gov/agencies/whd](http://www.dol.gov/agencies/whd)
  - Translation *not* required



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# FFCRA–Employee Layoffs

- FFCRA requirements are *not* applicable prior to **April 1, 2020**
- If a business closes after April 1, but before an employee takes leave, FFCRA requirements do not apply except to the days from April 1 to the date employees are laid off
- If a business is open but lays off part of its workforce, employees who are laid off or furloughed are not entitled to leave under the FFCRA



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# Emergency Paid Sick Leave Act (EPSLA)

Under the FFCRA

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# Emergency Paid Sick Leave Act (EPSLA)

## Benefit Basics:

- Six qualifying COVID-19 related reasons for job-protected leave
- During leave, continuation of health insurance
- Entitlement to paid sick leave over a 2-week period
  - Full-time employees, based on their schedule, up to 80 hours
  - Part-time employees, hours based on their schedule



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# EPSLA–Employee Eligibility

- All employees who work for covered employers are eligible
- Covered employers
  - Private sector employer with fewer than 500 employees
  - Public sector employers
    - All federal employees are generally eligible for EPSLA leave; however, OMB has authority to exclude certain federal employees



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# EPSLA–Qualifying Reasons for Leave (Reasons 1–3)

**An employee is entitled to take leave under the EPSLA if the employee is unable to work or telework 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 due to concerns related to COVID-19,
- 3) Is experiencing COVID-19 symptoms and seeking a medical diagnosis,



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# EPSLA–Qualifying Reasons for Leave (Reasons 4–6)

***(Continued)* An employee is entitled to take leave under the EPSLA if the employee is unable to work or telework because the employee:**

- 4) Is caring for an individual subject to a federal, state, or local quarantine or isolation order related to COVID-19, or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19,
- 5) Is caring for his or her child whose school or place of care is closed (or child provider is unavailable) due to COVID-19 precautions, or**
- 6) Is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services



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# EPSLA–Duration of Leave

Two-week period:

- Full-time employees may use up to 80 hours
- Part-time employees may use a number of hours equal to the number of hours they work, on average, over a 2-week period



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# EPSLA-Required Rate of Pay

The applicable rate of pay is the highest applicable wage rate, either the:

- Employee’s regular rate of pay,
- FLSA minimum wage, or
- Highest applicable state or municipal minimum wage



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# EPSLA–Paid Leave, 100% Calculation (Reasons 1–3)

- The employee is due **100%** the required rate of pay for leave hours taken because the employee:
  - Is subject to a federal, state, or local quarantine or isolation order related to COVID-19,
  - Has been advised by a health care provider to self-quarantine related to COVID-19, or
  - Is experiencing COVID-19 symptoms and is seeking a medical diagnosis
- Total pay capped at \$511 per day or \$5,110 in total



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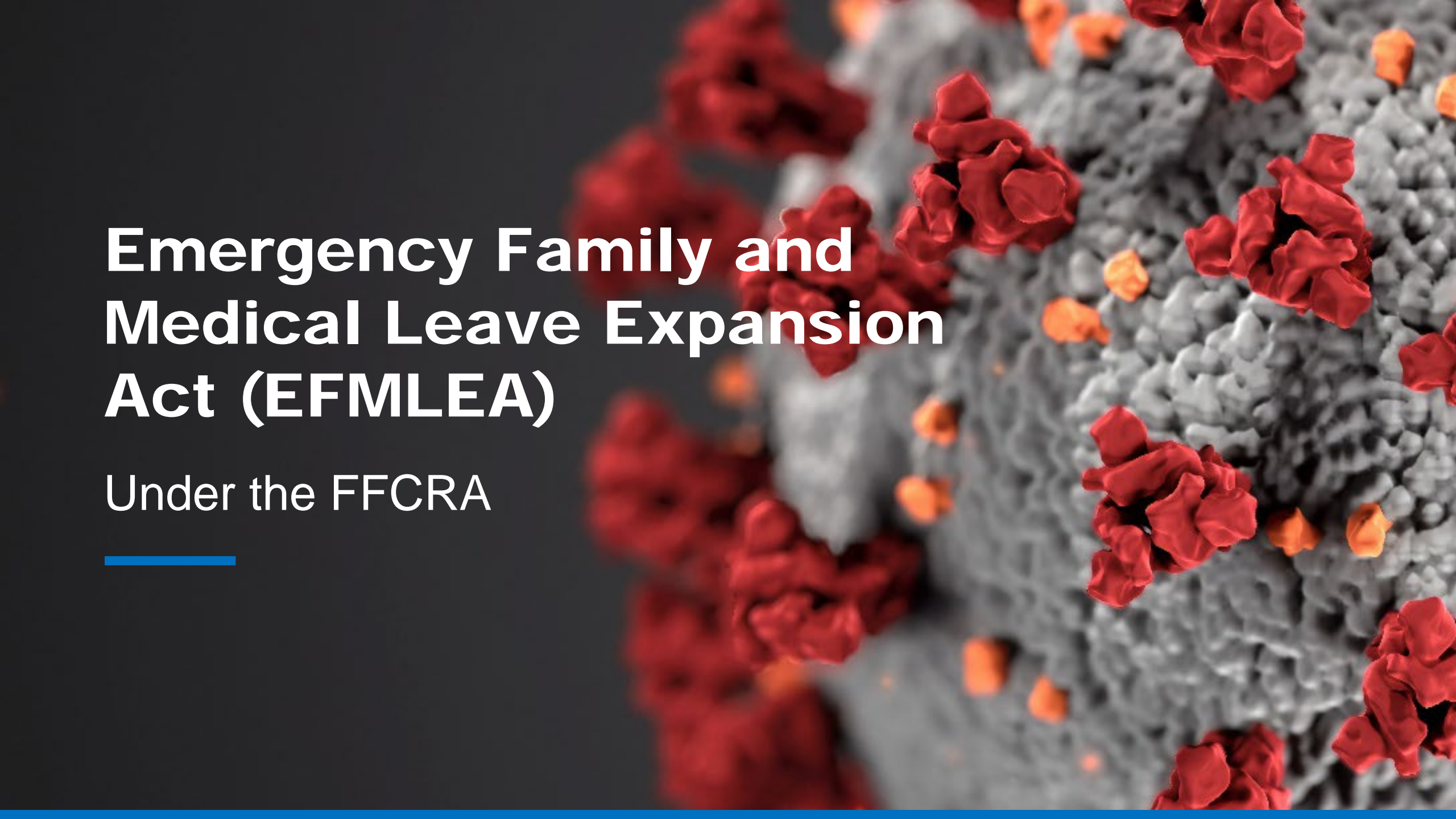
# EPSLA–Paid Leave, Two-Thirds Calculation (Reasons 4 - 6)

- The employee is due two-thirds of the required rate of pay for leave hours taken because the employee:
  - Is caring for an individual subject to a federal, state, or local quarantine or isolation order related to COVID-19,
  - Is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons, or
  - Is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.
- Total pay capped at \$200 per day or \$2,000 in total



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# Emergency Family and Medical Leave Expansion Act (EFMLEA)

Under the FFCRA

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# Emergency Family and Medical Leave Expansion Act (EFMLEA)

## Benefit Basics:

- Employee can only use EFMLEA leave to care for his or her son or daughter whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons
- Up to 12 workweeks of job-protected leave, with continuation of health insurance
- Initial 2 weeks unpaid
- Remaining 10 weeks paid at two-thirds the employee's regular rate of pay



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# EFMLEA–Employee Eligibility

All employees, including full-time and part-time employees, of covered employers are eligible for EFMLEA if they have been employed by their employer **for at least 30 calendar days**.

- Reminders:
  - Private sector employers, including not for profit employers, are covered if they employ fewer than 500 employees
  - Public agencies are covered regardless of the number of employees they employ
    - Federal employee eligibility notes – employees under Title I of the FMLA are eligible under EFMLEA; OMB has authority to exclude certain federal employees



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# EFMLEA–Qualifying Reason for Leave

There is only one qualifying reason for leave under the EFMLEA:

**Employee leave to care for his or her child whose school or childcare provider is closed or unavailable for reasons related to COVID-19.**



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# EFMLEA–Unpaid and Paid Leave Periods

- Initial two weeks of EFMLEA leave is “unpaid”
  - Employee may choose to use paid sick leave under the EPSLA, or accrued paid time under their employer benefits package, at the same time as unpaid EFMLEA leave
- Up to 10 weeks paid leave available
  - Hours of leave are paid at two-thirds the employee’s regular rate of pay
  - Employer does not have to pay more than \$200 a day or \$10,000 total under EFMLEA



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# EFMLEA Leave–Interaction with the FMLA

This is a new leave reason under the FMLA, *not more weeks*

- An employee who has already used 12 weeks of leave under the FMLA is not able to use EFMLEA leave



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# Temporary Non-Enforcement Period Applicable to the FFCRA

- The Department of Labor (DOL) will not bring enforcement actions against public or private employer for violations occurring within 30 days of the enactment of the FFCRA
  - March 18–April 17, 2020
- Provided an employer found to have violated the FFCRA acts “reasonably” and “in good faith”
  - Remedies any violations
  - Violations were not “willful”
  - DOL receive a written communication from the employer to comply with the Act in the future



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# FFCRA Resources

- [Families First Coronavirus Response Act: Employee Paid Leave Rights](#) - *Also available in Spanish*
- [Families First Coronavirus Response Act: Employer Paid Leave Requirements](#) - *Also available in Spanish*
- [Families First Coronavirus Response Act: Questions and Answers](#)
- [Field Assistance Bulletin \(FAB\) No. 2020-1](#)
- [\(Poster\) Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave under The Families First Coronavirus Response Act \(FFCRA\)](#) - *Also available in Spanish*
- [Families First Coronavirus Response Act Notice - Frequently Asked Questions](#)
- [\(Poster\) Federal Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave under the Families First Coronavirus Response Act](#) - *Also available in Spanish*
- [WHD-COVID19@dol.gov](mailto:WHD-COVID19@dol.gov) - *Email address for questions*



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