

Coronavirus Response Act Overview



	Emergency Paid Sick Leave Act (effective 04/01/20)	Emergency Family and Medical Leave Expansion Act (effective 04/01/20)	Emergency Unemployment Insurance Stabilization and Access Act of 2020													
Employers	<ul style="list-style-type: none"> Employers with fewer than 500 (< 500) employees Government employers Allows employers that employ health care providers or emergency responders to exclude such employees 	<ul style="list-style-type: none"> Employers with fewer than 500 (< 500) employees Government employers Allows employers that employ health care providers or emergency responders to exclude such employees 														
Eligible Employees	Full-time and part-time employees regardless of the length of time they have worked for their employer	Employees who have been employed by the employer for 30 calendar days (both full-time and part-time).														
Reasons	<ol style="list-style-type: none"> Quarantine or isolation order Advice from health care provider to self-quarantine Experiencing symptoms of COVID-19 and is seeking diagnosis Caring for an individual who qualifies under #1 or #2 above Caring for a child whose school or childcare facility has closed as a result of COVID-19 Experiencing other substantially similar conditions specified by HHS 	The Act provides 12 weeks of FMLA leave to employees (who are unable to work or telework) to care for an employee's child under 18 years of age if the child's school or childcare facility is closed or unavailable due to Coronavirus	The Act provides federal funds to help states pay for increased Unemployment Insurance claims caused by the outbreak.													
Exemptions	Employers with fewer than 50 employees are eligible for an exemption from the requirements to provide leave to care for a child whose school is closed or child care is unavailable in cases where the viability of the business is threatened.	Employers with fewer than 50 employees are eligible for an exemption from the requirements to provide leave to care for a child whose school is closed or child care is unavailable in cases where the viability of the business is threatened.														
Duration	<ul style="list-style-type: none"> Full-time employees: 80 hours Part-time employees: average number of hours the employee works over a two-week period 	12 Weeks														
Compensation	<table border="1"> <thead> <tr> <th>Reason for Leave</th> <th>Daily Pay Rate / Cap</th> <th>Total Pay Cap</th> </tr> </thead> <tbody> <tr> <td>1. Quarantine or isolation order</td> <td rowspan="3">Employee's regular rate of pay up to a cap of \$511</td> <td rowspan="3">\$5,110</td> </tr> <tr> <td>2. Advice from health care provider to self-quarantine</td> </tr> <tr> <td>3. Experiencing symptoms of COVID-19 and is seeking diagnosis</td> </tr> <tr> <td>4. Caring for an individual who qualifies under #1 or #2 above</td> <td rowspan="3">2/3 of the employee's regular rate up to a cap of \$200</td> <td rowspan="3">\$2,000</td> </tr> <tr> <td>5. Caring for a child whose school or childcare facility has closed as a result of COVID-19</td> </tr> <tr> <td>6. Experiencing other substantially similar conditions specified by HHS</td> </tr> </tbody> </table>	Reason for Leave	Daily Pay Rate / Cap	Total Pay Cap	1. Quarantine or isolation order	Employee's regular rate of pay up to a cap of \$511	\$5,110	2. Advice from health care provider to self-quarantine	3. Experiencing symptoms of COVID-19 and is seeking diagnosis	4. Caring for an individual who qualifies under #1 or #2 above	2/3 of the employee's regular rate up to a cap of \$200	\$2,000	5. Caring for a child whose school or childcare facility has closed as a result of COVID-19	6. Experiencing other substantially similar conditions specified by HHS	<ul style="list-style-type: none"> The first two weeks (defined in the law as 10 days) of leave is unpaid. Employees can elect to use available paid leave and employers are permitted to require employees use existing available paid leave. The pay is at a rate equal to at least 2/3 of the employee's regular pay, based on the number of hours the employee would otherwise normally be scheduled to work, and is capped at \$200 per day (\$10,000 total). 	
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Carryover & Use	<ul style="list-style-type: none"> Does not permit carryover of the leave past 2020 and does not require employers to pay unused sick leave at employment separation. Employees would be permitted to use the paid sick leave provided under this law before using any other available leave and employers cannot require employees to use pre-existing paid sick leave first Prohibits employers from requiring employees to search for or find replacements and prohibits discrimination and retaliation against employees for utilizing the sick leave or for opposing unlawful practices related to this law 		<ul style="list-style-type: none"> No waiting period 													
Tax Credit	Provides a tax credit to employers equal to 100% of the qualified sick leave benefits paid. To take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form	Provides a tax credit to employers equal to 100% of the qualified sick leave benefits paid. To take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form														
Job Restoration		The typical FMLA job restoration requirements do not apply to employers with fewer than 25 employees if: <ol style="list-style-type: none"> The employee's position doesn't exist because of economic conditions or changes due to COVID-19 The employer makes reasonable efforts to restore the employee to an equivalent position, and If reasonable efforts fail, the employer makes reasonable efforts during the proscribed period to contact the employee and notify him or her of an available equivalent position. The "proscribed period" referenced is the earlier of 1 year following (1) the date on which the employee's use of the leave ends, or (2) 12 weeks after the date on which the employee's leave begins 														
Non-Enforcement Period	The Department will not bring enforcement actions against any public or private employer for violations of the Act occurring within 30 days of the enactment of the FFCRA, i.e. March 18 through April 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the Act.															
Poster/Notice	The DOL has released the required poster/notice related to the new law. It must be placed in a conspicuous place in the workplace, be emailed or direct mailed to employees, or posted on an internal or external website available to employees. <i>See links on second page.</i>															

Existing Laws, Q&A and HDHP's - (COVID-19)

OSHA	<ul style="list-style-type: none"> • OSHA applies to all employers and the provision applicable in this case is the General Duty Clause. This provision requires employers to provide employees with a workplace free from recognized hazards likely to cause death or serious physical injury. Based on guidance from the DOL regarding COVID-19, it appears the DOL is implying that COVID-19 is a recognized hazard. • DOL recommends that employers develop an Infectious Disease Preparedness and Response Plan that among other things, evaluates the source of potential infection in the workplace (i.e., workers, suppliers, vendors, customers, etc.) and considers responses such as social distancing, staggered work shifts, temporary downsizing, remote work, and more. • OSHA guidance also recommends that employers implement basic infection prevention measures such as promoting frequent and thorough hand washing, providing hand sanitizer, increasing the frequency of office cleaning, limiting visitors, encouraging sick workers to stay home, and offering flexible work sites, flexible work hours, and remote work. • OSHA guidance also encourages employers to develop policies and procedures for identification and isolation of sick workers. This includes asking employees to self-monitor and inform if they suspect exposure, eliminating requirements for doctor's notes in light of overworked healthcare agencies and workers, and minimizing or eliminating travel.
ADA	<ul style="list-style-type: none"> • The ADA does have applicability, however, with respect to medical inquiries and medical examinations. Historically, EEOC guidance limits inquiries an employer can make into an employee's medical background. There is an exception, however, when reliable information gives rise to a reasonable belief that an employee poses a direct threat due to a medical condition. In that instance, medical inquiries can be made and medical examinations can be conducted. • With respect to the direct threat exception, the EEOC has outlined four factors to consider when determining whether an employee poses a direct threat: (1) the duration of the risk, (2) the nature and severity of the potential harm, (3) the likelihood that potential harm will occur, and (4) the imminence of the potential harm. In light of the Center for Disease Control's classification of COVID-19 as a pandemic, employers should be able to utilize the direct threat exception. • In addition, the EEOC has confirmed in updated guidance that employers can take the temperature of their employees (although it is not necessarily advised since fever is not always a COVID-19 symptom). The EEOC has also confirmed that their previous pandemic guidance does indeed apply with respect to the COVID-19 pandemic:
Workers Comp	In the case of COVID-19, this is generally more applicable to workers whose job requires them to be around sick people, i.e. healthcare workers. Texas Workforce Commission has indicated it will look at workers' compensation claims based upon COVID-19 on a case-by-case basis.
Dallas Paid Sick Leave	<ul style="list-style-type: none"> • For those employers that have more than 5 employees working 80 hours or more in a year within Dallas city limits, the City of Dallas will begin enforcing its Paid Sick Leave law on April 1, 2020. In light of COVID-19, employers can expect that employees will be more apt to utilize the paid sick leave. Although court action is pending, no decision has been made and employers should ensure they are in compliance with the Dallas Paid Sick Leave law. • Remember that the law requires employees to be able to accrue 1 hour of paid sick leave for every 30 hours of work (unless the employer front loads the hours). Accrual rates are capped at 48 hours for employers with 6-15 employees and 64 hours for employers with more than 15 employees.
Unemployment	The Texas Workforce Commission has indicated that workers whose employment is affected by COVID-19 may file for unemployment and identify COVID-19 as the reason for separation. A temporary layoff, furlough, or even reduction in hours can create unemployment eligibility for employees. In addition, Texas recently announced that they would not penalize employers for an increase in unemployment claims related to COVID-19.
WARN (Worker Adjustment and Retraining Notification Act)	<ul style="list-style-type: none"> • WARN applies to employers with 100 or more employees. Among other requirements, it requires employers to provide a 60-day notice period for any closings. The law is triggered when (1) an employment site is shut down and the shutdown will result in an employment loss of 50 or more employees or (2) the employer institutes a mass layoff, which is defined as a layoff of 500 or more employees OR a layoff of 50-499 employees if the total equals at least 33% of the active workforce. • With respect to the triggering provisions, employment loss is defined as (1) termination of employees other than for cause, voluntary, or retirement, (2) a layoff exceeding 6 months, or (3) a reduction in hours worked of more than 50% in each month of a 6-month period. • Under WARN, there are exceptions for natural disasters and unforeseeable business circumstances. It is likely that one of those would apply in this case. The exception allows employers to forego the 60-day notice as long as they provide notice as soon as practicable.
What Can Employers Do?	<ul style="list-style-type: none"> • You CAN send employees home if they are exhibiting symptoms • You CAN prohibit employees from coming to work if they are exhibiting symptoms • Other than providing the legally mandated paid sick leave or paid family leave outlined above, you CAN refuse to compensate workers if you send them home or prohibit them from coming to work or working remotely <ul style="list-style-type: none"> > Just be sure that for exempt employees who perform any work in a workweek, you compensate them for the full week in order to maintain the exemption • You CAN inquire about employees' travel and prohibit employees from coming into work based upon that travel • You CAN inquire if employees are experiencing COVID-19 symptoms (just maintain confidentiality)
WHAT CAN EMPLOYERS NOT DO & WHAT SHOULD EMPLOYERS NOT DO?	<ul style="list-style-type: none"> • You CANNOT target employees of specific national origins • You SHOULD NOT take adverse action against an employee that refuses to come to work based upon COVID-19 (without first consulting your lawyer)
FAQ's - FFCRA	https://www.dol.gov/agencies/whd/pandemic/ffcra-questions
FAQ's - Poster/Notice	https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions 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_Federal.pdf
HDHP's and COVID-19 Costs	<ul style="list-style-type: none"> • HDHPs can pay for COVID-19 testing and treatment before plan deductible is met • These plans remain HSA compatible • Future COVID-19 vaccine costs <ul style="list-style-type: none"> > Count as preventive care > Can be paid for by an HDHP without cost sharing



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