What Does the FFCRA Mean for Municipalities?

Updated April 3, 2020 – Pandemic-related bills, laws, and guidance have been changing quickly during the past week or so. Our answer to the question “What Does the FFCRA Mean for Municipalities?” is based on information we believe to be true as of this date, to the best of our ability, and should not be construed as legal advice. Further guidance may be forthcoming from the U.S. Department of Labor (DOL). The DOL has been continually updating its FAQs at this link: [dol.gov/agencies/whd/pandemic/ffcra-questions](https://dol.gov/agencies/whd/pandemic/ffcra-questions).

The Families First Coronavirus Response Act (FFRCA) is a federal law that becomes effective April 1 and sunsets after December 31, 2020. As far as we can tell, it covers all municipalities. If employees are furloughed or laid off because there is not enough work, they will not be entitled to FFCRA benefits; however they may be eligible for unemployment insurance benefits. (See Question #52 at the link above.) Both BlueCross BlueShield and MVP have confirmed that, due to this pandemic, if employers choose to continue to pay employees’ premiums, the employees will be permitted to stay on the group health plan without having to pay premiums themselves through COBRA or the equivalent state law.

A notice about the FFCRA must be posted in the workplace. Since many employees are teleworking or otherwise at home, we also recommend emailing a copy. To download a copy of the required Employee Rights notice, scroll down to the poster section at [dol.gov/agencies/whd/pandemic](https://dol.gov/agencies/whd/pandemic).

The FFCRA requires covered employers to provide paid sick leave and expanded Family and Medical Leave Act (FMLA) leave due to the COVID-19 pandemic. The FMLA provision applies even if none of your employees previously qualified because your municipality has fewer than 50 employees.

Our current understanding is that the federal government is reimbursing these pandemic-related sick leave and FMLA leave expenses through payroll tax credits for the private sector only. Therefore, these requirements for sick leave pay and paid FMLA appear to be unfunded mandates for municipalities.

The FFCRA’s two requirements are outlined below. Covered employers must:

I. Provide two weeks of additional paid sick leave to all employees, if the employee cannot work or telework, due to a COVID-19-based qualifying reason. The six qualifying reasons are when 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 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 of Treasury.

For reasons 1-3, the employee would be paid at 100% of their regular rate of pay, capped at $511 per day and $5110 over the two-week period. For reasons 4-6, the employee would be paid at 2/3 of their regular rate of pay, capped at $200 per day and $2000 over the two-week period.

It is unclear whether Governor Scott’s Executive Order applies to #1 above. It may qualify non-essential employees for the two weeks of paid sick leave under reason #1 above if they are unable to work or telework. Please see the VLCT Municipal Assistance Center article What Are “Essential Local Government Services and Functions”?

Employees are likely to be able to work if the municipality provides proper safety precautions. Here is a relevant Q&A provided by Burlington law firm Stitzel Page & Fletcher:

Q: Must we take any special measures for our offices and operations that remain open?
A: Yes. Under EOA-6 ¶ 4, municipalities must develop strategies, procedures and practices designed for strict adherence to CDC and Vt. Dept. of Health guidance to ensure recommended social distancing, specifically:

a. maintaining a distance of 6 feet between persons;
b. requiring employees to practice appropriate hygiene measures, including regular, thorough handwashing;
c. requiring employees who are sick remain home; and
d. regularly cleaning and disinfecting frequently touched objects and surfaces.

To comply with this directive, at a minimum we recommend distributing and posting these guidelines in your municipal workplace immediately along with a directive to employees to follow the guidelines.

Paid sick leave under the FFCRA is extra paid leave in addition to, not instead of, any accruals that an employee may already have. Please refer to the DOL’s latest Q&As about the FFCRA [1].

II. Provide FMLA leave of an additional ten weeks, beyond the two weeks of paid leave above, to an employee who has worked at least 30 days, if the employee cannot work or telework in order to care for a child, below age 18, whose school or place of care is closed, or whose child care provider is unavailable, for reasons related to COVID-19.

The eligible employee would be paid at 2/3 of their regular rate of pay, capped at $200 per day. Including the two-week period noted in Section I. above, the aggregate pay over the 12-week FMLA period would be $12,000.

After their two weeks of paid leave, some employees (if seriously ill or caring for someone who is) may qualify for regular FMLA and Vermont’s Parental and Family Leave Act (VPFLA) leave, which provides job-protected leave for up to 12 weeks total, meaning an additional 10 weeks, if they have received the two
weeks’ paid sick leave outlined above.

Currently, under the VPFLA, the employee may choose to use accrued paid leave for up to half of their VPFLA leave. If employees do not qualify for FMLA or VPFLA leave, be sure to follow your policies, contracts, and laws such as the Fair Labor Standards Act and Vermont earned sick time law, in making pay decisions.

Attachments:
- [FFCRA_4-03-20.pdf](https://www.vlct.org/sites/default/files/FFCRA_4-03-20.pdf)

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**EMPLOYEE RIGHTS**

**PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT**

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

- **PAID LEAVE ENTITLEMENTS**
  Generally, employers covered under the Act must provide employees:
  
  Up to two weeks (80 hours, or a part-time employee’s two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:
  
  - 100% for qualifying reasons #1-3 below, up to $511 daily and $5,110 total;
  - 2/3 for qualifying reasons #4 and 6 below, up to $200 daily and $2,000 total; and
  - Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 below for up to $200 daily and $12,000 total.

  A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

- **ELIGIBLE EMPLOYEES**
  In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

- **QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19**
  An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

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**Links**

[1] [https://www.dol.gov/agencies/whd/pandemic/ffcra-questions](https://www.dol.gov/agencies/whd/pandemic/ffcra-questions)

[2] [https://www.dol.gov/agencies/whd/pandemic](https://www.dol.gov/agencies/whd/pandemic)

[3] [https://www.vlct.org/sites/default/files/FFCRA_4-03-20.pdf](https://www.vlct.org/sites/default/files/FFCRA_4-03-20.pdf)