

Families First Coronavirus Response Act (FFCRA) Employee Paid Leave Exemptions Frequently Asked Questions

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The State of Tennessee is experiencing extraordinary circumstances due to the Coronavirus Disease 2019 (COVID-19), but the mission of the Tennessee Department of Mental Health and Substance Abuse Services has not changed. The Department continues to create collaborative pathways to resiliency, recovery, and independence for Tennesseans living with mental illness and substance use disorders. In challenging times such as these, it is even more important to focus on our unwavering commitment to keep patients and those who service them at the forefront of every decision. The Department, dedicated Regional Mental Health Institute staff, and community behavioral health care staff deliver essential services to over 370,000 Tennesseans, and we must continue our critical work to assist this vulnerable and deserving population.

The Department created this FAQ to offer guidance regarding parts of the Families First Coronavirus Response Act (FFCRA or the Act), which will become effective on April 1, 2020. This FAQ does not attempt to address every part of the FFCRA, and you should review the FFCRA in full at the link provided below. You can access additional guidance on the U.S. Department of Labor website, <https://www.dol.gov/>.

1. What is the FFCRA?

The FFCRA is a federal law that passed on March 18, 2020, and provides various forms of relief in response to the COVID-19 outbreak. The law goes into effect on April 1, 2020, and expires on December 31, 2020. The FFCRA includes the Emergency Family and Medical Leave Expansion Act (“Expansion Act”) and the Emergency Paid Sick Leave Act (“Sick Leave Act”). You can read the entire FFCRA [here](#).

2. **Does the FFCRA change any services, or the eligible beneficiaries thereof, that are provided by the Department of Mental Health and Substance Abuse Services and its partners?**

No. In fact, the Governor has specifically addressed the continuation of these essential services.

Executive Order 17, Section 3, provides that “[a]ll critical infrastructure remains operational, and government entities and businesses will continue providing important and essential services.”

Executive Order 20 states that “it is imperative that essential healthcare services, including mental health services, remain accessible to Tennesseans” and that “providing essential healthcare services in a manner that minimizes the continued spread of COVID-19 requires the use of alternative delivery mechanisms to protect healthcare providers and patients.”

3. **What is the Expansion Act?**

The Expansion Act temporarily expands the Family and Medical Leave Act (FMLA) to cover leave for employees—but only those employed for at least 30 days—who are unable to work or telework due to a need to care for a son or daughter under age 18 if their school or child care provider is closed or the child care provider is unavailable due to the COVID-19 public health emergency. The Expansion Act allows for the first 10 days of leave to be unpaid, but weeks 3 through 12 of its effective period are required to be paid leave. Full-time employees receive 2/3 of their regular pay and part-time employees receive a prorated amount. The Act includes limitations on the total amount of pay.

4. **What is the Sick Leave Act?**

The Sick Leave Act allows for 2 weeks of paid sick leave for employees, regardless of length of employment, if an employee is unable to work or telework for specified events related to COVID-19. The events are:

- a. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19; or
- b. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- c. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis; or
- d. The employee is caring for an individual who is subject to a quarantine or isolation order related to COVID-19 or an individual that has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- e. The employee is caring for his or her son or daughter if their school or childcare provider has been closed or the childcare provider is unavailable due to COVID-19 precautions; or
- f. The employee is experiencing “any other substantially similar condition specified by the secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Full-time employees are entitled to 80 hours of paid sick leave and part-time employees are entitled to the number of hours (s)he works on average over a two-week period. Employees may, but are not be required to, use paid leave time before this emergency paid sick time is applied. The Act includes limitations on the total amount of pay.

5. Is there any reimbursement to employers for payments required by the Expansion Act or Sick Leave Act?

The FFCRA provides private sector employers with tax credits related to the paid leave provisions created by the Act.

6. Are any workers exempt from benefits under the Expansion Act or the Sick Leave Act?

Under both the Expansion Act and the Sick Leave Act, the Department of Labor can “issue regulations for good cause . . . to exclude certain health care providers and emergency responders.”

Under the Expansion Act, “[a]n employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the provisions” of the Expansion Act.

7. What is a “health care provider” under the Act?

The U.S. Department of Labor has issued the following guidance on what the term “health care provider” means:

[A] 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 care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> - see question 56.

8. What is an “emergency responder” under the Act?

The U.S. Department of Labor has issued the following guidance on what the term “emergency responder” means:

[a]n emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services

are otherwise needed to limit the spread of COVID-19. This includes but is not limited to 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. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state's or territory's or the District of Columbia's response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> - see question 57.

9. Are there any Emergency Executive Orders issued by the Governor that relate to implementation of the FFCRA?

Executive Order 17, Section 3, provides that “[a]ll critical infrastructure remains operational, and government entities and businesses will continue providing important and essential services.”

Executive Order 20 states that “it is imperative that essential healthcare services, including mental health services, remain accessible to Tennesseans” and that “providing essential healthcare services in a manner that minimizes the continued spread of COVID-19 requires the use of alternative delivery mechanisms to protect healthcare providers and patients.”