



New COVID-19 Leave Requirements for FFCRA-Covered Employees and New Alternative Benefit Plan for Excluded State Employees

A new federal law—Families First Coronavirus Act—creates a temporary right to additional paid leave. However, not all employees will have this right because employers are permitted to exclude anyone they designate as a “health care provider” or “emergency responder”. This fact sheet: 1) provides an overview of the rights and requirements for employees who are covered by this new law; 2) describes the alternative benefit plan that AFSCME Council 31 developed with the Pritzker Administration for state employees who are excluded from coverage under the FFCRA because they have been designated as health care providers or emergency responders.

FFCRA-COVERED EMPLOYEES

What kind of leave does the FFCRA provide?

Two kinds of leave are required. ***Emergency paid sick leave*** is the most widely available leave of the two kinds but is provided for only two weeks. ***Emergency family leave*** is available for a longer period only when a parent needs to care for a child for reasons related to the COVID-19 pandemic. An employee generally would take emergency paid sick leave before taking emergency family leave.

How long is the leave?

Emergency paid sick leave can be taken for up to two weeks. For a full-time employee, this means 80 hours for employees on a 40-hour week schedule. Employees on a less than 40-hour week are considered in the same manner as part-time employees and the determination is made based on the average number of hours an employee is scheduled to work up to a maximum of 80 hours.

Emergency family leave can be taken for up to 12 weeks. While the first two weeks (i.e., 10 days) of it may be unpaid, the expectation is that an employee will take emergency paid sick leave during that time. Emergency family leave may be taken intermittently (e.g. every Monday and Wednesday) up to the total number of days represented by the 12 week limit with the agreement of the employer.

For what reasons can an employee take leave?

Emergency paid sick leave is available only when an employee is unable to work (or to telework) due to any of the following reasons related to COVID-19:

1. The employee is under an official quarantine or isolation order.
2. The employee has been advised by a health care provider to self-quarantine.
3. The employee is experiencing COVID-19 symptoms and seeking a medical diagnosis.
4. The employee is caring for an individual who is under an official quarantine or isolation order or who has been advised by a health care provider to self-quarantine.
5. The employee is caring for a son or daughter under 18 years old (or an adult son or daughter in limited circumstances, described below) if the child’s school or place of care has been closed, or childcare provider is unavailable, due to COVID-19 precautions.

Emergency family leave is available **only** when an employee is unable to work (or to telework) due to a need to care for the employee's son or daughter under 18 years old (or an adult son or daughter in limited circumstances, described below) if the child's school or place of care has been closed due to a declared COVID-19 public health emergency.

Special Rule When Caring for Certain Adult Children—Although it is not spelled out in the law, DOL has said it will require employers to provide both kinds of emergency leave when an employee needs it to care for an adult son or daughter (i.e., one who is 18 years of age or older) whose school or place of care has been closed, or care provider is unavailable, due to COVID-19 precautions if the adult child (a) has a mental or physical disability and (b) is incapable of self-care because of that disability.

How much does an employee get paid while on leave?

When taking **emergency paid sick leave** to care for oneself (reasons 1–3 under “For what reasons can an employee take leave?”), an employee is paid 100% of the employee's regular rate of pay multiplied by the number of hours the employee would normally be scheduled to work. Pay is capped at \$511 per day and \$5,110 total.

When taking this leave to care for others or for other reasons (reasons 4–5), an employee is paid two-thirds of the employee's regular rate of pay multiplied by the number of hours. Pay is capped at \$200 per day and \$2,000 total.

After the first 10 days of **emergency family leave**, an employee is paid two-thirds of the employee's regular rate of pay multiplied by the number of hours the employee would normally be scheduled to work. Pay is capped at \$200 per day and \$10,000 total.

How do these new leave requirements relate to leave provided for under collective bargaining agreements, employer policies or other laws?

The new law states that **emergency paid sick leave** does not diminish an employee's rights or benefits under any other law, collective bargaining agreement or existing employer policy. Any employee who separates from employment is not entitled to payment for any unused emergency paid sick leave.

An employee can choose to take any accrued vacation leave, personal leave or medical or sick leave for the unpaid first two weeks of **emergency family leave**. Generally, an employee would be likely to take emergency paid sick leave during that period. An employer cannot require an employee to take other kinds of accrued leave instead of the emergency family leave. Because it is a kind of federal Family and Medical Leave Act (FMLA) leave, any emergency family leave taken counts against an employee's entitlement to a total of 12 weeks of FMLA leave in a 12-month period, if the employee is otherwise eligible to other kinds of FMLA leave.

How long will employees have access to this leave?

This right to this leave became effective on April 1, 2020 and is scheduled to expire on December 31, 2020.

FFCRA-EXCLUDED EMPLOYEES

Does the alternative plan developed by AFSCME and the Pritzker Administration for excluded employees provide any new benefits?

Yes, the plan provides Pandemic Premium Pay of 12% of base salary for all excluded employees. This premium will be paid for all hours worked April 16-May 31, with the possibility of extension beyond that date if the pandemic emergency conditions continue.

In addition, the plan provides for one additional Personal Day effective January 2021 for all employees who work all assigned days April 16-May 31.

Do excluded employees receive any child care assistance?

Yes, employees can access the IDHS Child Care Assistance Program which provides child care at specially-licensed centers and homes across the state at a nominal cost.

What kind of leave does the alternative plan for excluded employees provide?

Emergency paid sick leave allows an employee to remain in pay status without using any of his/her accrued benefit time (e.g. vacation, sick, personal days) when an employee is unable to work (or to telework) due to any of the following reasons related to COVID-19:

1. The employee is under a quarantine or isolation order.
2. The employee has tested positive for COVID-19
3. The employee has been advised by a health care provider to self-quarantine.
4. The employee is experiencing COVID-19 symptoms and seeking a medical diagnosis.
5. The employee is caring for an individual who is under an official quarantine or isolation order or who has been advised by a health care provider to self-quarantine.

How long is the leave for excluded employees?

Emergency paid sick leave can be taken when an employee is symptomatic for COVID-19 and awaiting test results; when an employee is sick with COVID-19; when an employee is under a quarantine or isolation order because of exposure to COVID-19; or when an employee is caring for an individual who has tested positive for COVID-19. The leave is in effect until the employee or the individual for whom he or she is caring no longer has the virus.

How much does an excluded employee get paid while on leave?

The employee is paid at 100% of salary when they are on leave for any of the reasons listed in 1-5 above with no set maximum amount.

Since this new leave is temporary, how long will eligible employees have a right to this leave?

There is currently no expiration date for access to this emergency sick leave.

How do these new leave requirements relate to leave provided for under collective bargaining agreements, employer policies or other laws?

Emergency paid sick leave does not diminish an employee's rights or benefits under any other law, collective bargaining agreement or existing employer policy. Any employee who separates from employment is not entitled to payment for any unused emergency paid sick leave.