



100 South Grand Avenue, East • Springfield, Illinois 62762
401 South Clinton Street • Chicago, Illinois 60607

4/6/20

Dear Partners,

Last week, two provisions of the federal Family First Coronavirus Response Act (FFCRA) went into effect: (1) Emergency Paid Sick Leave and (2) Emergency Family and Medical Leave Act (FMLA) Expansion. I know many of our community partners have questions about how this new law affects both their employees and their organization's continuing ability to provide vital services. Although each employer is ultimately responsible for their own interpretation and implementation of the law and, subject to further guidance at either the federal or State level, I want to provide the Department's initial overview and thoughts on implementation of the law. You may also want to seek HR and/or legal advice specific to your organization.

FFCRA Requirements

If you are not familiar with the requirements, the FFCRA requires certain employers to give employees, employed for 30 days or more, paid time off due to the COVID-19 pandemic. **As further detailed, below, certain organizations and employees are exempt/excluded from these provisions.**

First, eligible employees may receive up to 80 hours of paid sick leave at the employee's regular rate of pay (capped at \$511 per day or \$5110 for the 80 hour period) if the employee is unable to work because he or she:

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;
4. Needs to care for an individual who:
 - a. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
 - b. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or

5. Needs to care for the employee's child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons.

The FFCRA also requires certain employers to provide up to twelve weeks of expanded FMLA, first two weeks unpaid (although may be covered by the paid sick leave, above) and remaining 10 weeks paid at 2/3 of the employee's regular rate of pay, capped at \$200/day), if an eligible employee is unable to work because he or she:

1. Needs to care for the employee's child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons.

There are other additional requirements for employers under this new policy and I encourage you to visit the United States Department of Labor ("USDOL") Website for more information.

Exemptions

We have received many questions about whether DHS-funded, contracted, and/or regulated organizations are exempt from providing paid sick leave and paid FMLA. The FFCRA excludes the following entities from the paid leave requirements:

- Providers with less than 50 employees may be exempt from providing paid sick leave and paid FMLA due to school or daycare closing if paid FMLA would "jeopardize the viability of their business as a going on." However, the organization may still be required to provide paid sick leave due to other COVID-19 concerns;
- Providers with more than 500 employees may not be required to provide paid sick leave or paid FMLA;
- Anyone working at a Health Care Provider is exempt; and
- Anyone working at an Emergency Responder is exempt.

USDOL guidance states that "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



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institution, facility, location, or site where medical services are provided that are similar to such institutions.” (emphasis added) (See question 56: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>)

As noted in the guidance, the exclusion can cover “anyone” at the health care provider, regardless of whether they are in a direct care position. However, the guidance also states: “To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.”

As detailed above, the USDOL intended for the definition of Health Care Provider to be “broader than “diagnosing medical professionals.” Consequently, if your organization has employees who have to register with the Health Care Worker Registry, then your organization may be exempt. These entities include, but are not limited to:

- Community Living Facilities;
- Long-Term Care Facilities;
- Early Intervention Programs;
- Community Day Programs; and
- Community-Integrated Living Arrangements.

Moreover, if your organization has a health care facility, then your organization may be exempt. These entities include, but are not limited to:

- Skilled and intermediate long-term care facilities licensed under the Nursing Home Care Act;
- Skilled and intermediate care facilities licensed under the ID/DD Community Care Act or the MC/DD Act; and
- Facilities designated as supportive living facilities.

Home-based services provided through the DRS Home Services Program and through the DDD Home-Based Services Programs are also likely exempt since they are considered home health care providers. Community Mental Health Centers, as providers of mental health care, may also fall under the definition of Health Care Provider.



JB Pritzker, Governor

Grace B. Hou, Secretary

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Even if your organization does not meet the definition of a Health Care Provider or Emergency Responder, the FFCRA states that the paid leave requirements due to school or child care reasons do not apply to organizations with less than 50 employees if it would “jeopardize the viability of their business as a going.” I recommend that you visit the DOL website and seek HR and/or legal advice, to see if any other special rules may apply.

For further information, please see:

1. The attached federal and State one-pagers provided to State employees.
2. [The law itself](#)
3. [The USDOL questions](#)
4. [Temporary Rule \(including pages 34-37\)](#)
5. [IRS 2020-57](#)

Questions

I understand your organization may still have questions about whether you are exempt from these leave requirements. As we receive any more information or guidance, we will share. If you have any questions, please send them to dhs.covid19@illinois.gov.

Thank you for your dedication during this period of uncertainty.

Sincerely,
Grace B. Hou

Secretary, IDHS