

## The Families First Coronavirus Response Act (FFCRA) of 2020

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Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

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## The Families First Coronavirus Response Act (FFCRA) of 2020

Reference Number:  
MTAS-3008

The Families First Coronavirus Response Act (FFCRA) was enacted on March 18, 2020 as Public Law 126-127 and became effective on April 1, 2020. The Act continues until December 31, 2020 at which time it will sunset. The FFCRA requires certain employers to provide their employees with two benefits for specified reasons related to COVID-19: emergency paid sick leave and emergency paid family and medical leave. Local governments are covered employers under the act, but are permitted to exclude employees from eligibility who are classified as Emergency Responders under definition(s) established by the U.S. Department of Labor, and as expanded by the Governor.

Employers are required to post an approved notice of the FFCRA leave rights. The posters are available on the Department of Labor website.

[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_Non-Federal.pdf) [1]

## Exclusions from FFCRA Eligibility for Emergency Responders and Essential Government Functions

Reference Number:  
MTAS-3009

Local governments are permitted to exclude employees from the FFCRA [2] based on the employee's status as an Emergency Responder, or as providing Essential Government Functions. The US. Department of Labor (DOL) has the authority to exclude certain health care providers and emergency responders from the definition of employee under sections of the Act, and the Governor has the authority to exclude those providing essential government functions.

**From the DOL FFCRA Q&A [3]:**

**57 - Who is an emergency responder?** For the purposes of Employees who may be excluded from both Paid Sick Leave or Expanded Family and Medical Leave by their Employer under the FFCRA, an emergency responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to 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, child welfare workers and service providers, 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 whom 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.

Governor Lee issued guidance via **Executive Order 22 [4]** on which positions constitute Essential Government Functions to further guide cities on identifying which positions may be excluded from the FFCRA provisions in order that all critical infrastructure remains operational, and government entities and businesses will continue providing important and essential services. The Governor's expansion of defined Essential Government Functions can be found in the document titled Attachment A to Executive Order No. 22 [4] (page 8, item #5).

Once a municipality determines which functions are to be categorized as essential, and which emergency responders are required to provide and/or support the provision of such functions, it should take appropriate action under its particular form of government to document those positions it is excluding from coverage. The DOL advises that employers be judicious when determining exclusions, and do so based on actual job functions.

## Expanded Family Medical Leave (FMLA) under FFCRA

Reference Number:  
MTAS-3010

### Expanded Family Medical Leave

The purpose of this policy is to provide a family and medical leave policy in compliance with DIVISION C—Emergency Family And Medical Leave Expansion Act; Public Law 116-127, titled Families First Coronavirus Response Act (FFCRA), during the period beginning on April 1, 2020, and ending on December 31, 2020, because of a qualifying need related to a public health emergency.

### Eligibility

In lieu of the definition in sections 101(2)(A) and 101(2)(B)(ii) of the Family Medical Leave Act of 1993, as amended, the

term 'eligible employee' means an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested during the period that the Act is in effect, *and has not been excluded as an Emergency Responder, or as one who provides, or supports the provision of, essential government functions.*

#### **Additional Definitions**

**QUALIFYING NEED RELATED TO A PUBLIC HEALTH EMERGENCY**—The term 'qualifying need related to a public health emergency', with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

**PUBLIC HEALTH EMERGENCY**—The term 'public health emergency' means an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

**CHILD CARE PROVIDER**—The term 'childcare provider' means a provider who receives compensation for providing childcare services on a regular basis, including an 'eligible childcare provider' (as defined in section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n)).

**SCHOOL**—The term 'school' means an 'elementary school' or 'secondary school' as such terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

#### **Leave Limits and Pay**

The first 10 days (weeks 1-2) for which an employee takes leave under the E-FMLA may consist of unpaid leave. An employee may elect to substitute any accrued vacation leave, personal leave, emergency medical leave as provided under the Emergency Sick Leave Act of the FFCRA or medical or sick leave for unpaid leave.

Subsequent leave (weeks 3-12) will be compensated at two-thirds (2/3) the employee's regular rate of pay for the number of hours the employee would otherwise be normally scheduled to work.

In the case of an employee whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken leave under the Act, the employer shall use the following in place of such number:

- (i) a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type.
- (ii) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

In any case where the necessity for leave under the Act is foreseeable, an employee shall provide the employer with such notice of leave as is practicable.

#### **Job Restoration**

##### **SEC. 104 of the Family Medical Leave Act**

#### **EMPLOYMENT AND BENEFITS PROTECTION**

##### **(a) RESTORATION TO POSITION.**

(1) **IN GENERAL.** Except as provided in subsection (b), any eligible employee who takes leave under the Act for the intended purpose of the leave shall be entitled, on return from such leave--

(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or  
(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) **LOSS OF BENEFITS.** The taking of leave under the Act shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(3) **LIMITATIONS.** Nothing in this section shall be construed to entitle any restored employee to--

(A) the accrual of any seniority or employment benefits during any period of leave; or  
(B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

Circumstances described in Section 104(a)(1) shall not apply with respect to an employee of an employer who employs fewer than 25 employees if the conditions described in paragraph (2) are met.

(2) **CONDITIONS.** The conditions described in this paragraph are the following:

(A) The employee takes leave under the Act.

(B) The position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer—

(i) that affect employment; and

(ii) are caused by a public health emergency during the period of leave.

(C) The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment.

(D) If the reasonable efforts of the employer under subparagraph (C) fail, the employer makes reasonable efforts during the period described in paragraph (3) to contact the employee if an equivalent position described in subparagraph (C) becomes available.

- (3) CONTACT PERIOD. The period described under this paragraph is the 1-year period beginning on the earlier of—  
 (A) the date on which the qualifying need related to a public health emergency concludes; or  
 (B) the date that is 12 weeks after the date on which the employee's leave under section 102(a)(1)(F) commences.

## Emergency Sick Leave under the FFCRA

Reference Number:  
 MTAS-3011

### Eligibility

**ELIGIBLE EMPLOYEE**—there is no elimination period for eligibility. An employee is eligible if employed during the period the Act is in effect, *if not excluded as an Emergency Responder or as one who provides, or supports the provision of, essential governmental functions.*

### Leave Limits

An eligible employee may take up 80 hours (for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons. However, the total number of hours for which you receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

### Qualifying Need

The term 'qualifying need related to a public health emergency', with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

### Paid Leave

If the eligible employee is taking paid sick leave because he/she is unable to work or telework due to a need for leave because he/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; or (3) is experiencing symptoms of COVID-19 and is seeking medical diagnosis, he/she will receive for each applicable hour the greater of:

- His/her regular rate of pay, (A part-time employee is entitled to leave for his or her average number of work hours in a two-week period.)
- the federal minimum wage in effect under the FLSA, or
- the applicable State or local minimum wage.

In these circumstances, he/she is entitled to a maximum of \$511 per day, or \$5,110 total over the entire paid sick leave period.

If he/she is taking paid sick leave because he/she is: (1) caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (2) caring for his/her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or (3) experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services, he/she are entitled to compensation at 2/3 of the greater of the amounts above. Under these circumstances, he/she is subject to a maximum of \$200 per day, or \$2,000 over the entire two-week (80 hour) period.

## Families First Coronavirus Response Act (FFCRA) DOL FAQ Page

Reference Number:  
 MTAS-3012

The U.S. Department of Labor (DOL) will be issuing implementing regulations. Additionally, as warranted, the Department will continue to provide compliance assistance to employers and employees on their responsibilities and rights under the FFCRA. The DOL has developed a Questions and Answers Page that is updated frequently:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> [3]

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### Links:

[1] [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_Non-Federal.pdf)

[2] <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

[3] <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

[4] <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee22.pdf>

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