

GUIDE FOR ARIZONA EMPLOYERS: EMPLOYEE LEAVE REQUIREMENTS UNDER FFCRA

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The "Families First Coronavirus Response Act" went into effect on April 1, 2020. This legislation, among several other things, requires certain employers to provide paid sick leave to employees who are unable to work due to COVID-19. While paid sick leave is nothing new to Arizona employers (who have been required to provide earned paid sick leave since Proposition 206 passed in November 2016), this new federal law has several new requirements to navigate. This Alert will provide an overview of the new requirements, how they interplay with existing paid sick leave requirements, and other potential issues for employers.

THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act – FFCRA for short – requires employers *with fewer than 500 employees* to provide paid sick leave and expanded FMLA leave. It does not apply to large employers. The new leave requirements also apply to public employers (Cities, Counties, School Districts).

The FFCRA provides for two separate types of leave: (1) paid sick leave related to COVID-19 and (2) extended family leave.

Paid Sick Leave Under the FFCRA (Emergency Paid Sick Leave Act (EPSLA))

The paid sick leave provisions of the FFCRA requires qualifying employers to provide two weeks of paid sick leave, with full-time employees receiving eighty hours and part-time employees receiving the equivalent of their average hours worked every two weeks.

An employee qualifies for this paid sick leave if he or she 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 related to COVID-19;
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. Is caring for an individual subject to a quarantine or isolation order or who has been advised to self-quarantine by a health care provider;
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.

Note that this is not generalized sick leave: it instead applies only to employees who fall into one of the specified categories outlined above.

Employees who are themselves unable to work due to a quarantine or isolation order, have been advised to self-quarantine, or who have been experiencing symptoms of COVID-19 and are seeking a medical diagnosis, are entitled to their regular rate of pay or the applicable minimum wage (whichever is higher) up to \$511 per day (for a total maximum of \$5,110). Employees who are unable to work because they are caring for an individual in quarantine, isolation, or self-quarantine or who are caring for a child whose school or place of care is closed because of COVID-19, are entitled to 2/3 of their regular rate of pay or 2/3 the applicable minimum wage (whichever is higher) up to \$200 a day (for a total maximum of \$2,000).

Expansion of Family Medical Leave Under the FFCRA (Emergency Family Medical Leave Act (EMFLA))

The extended family leave provision of the FFCRA, meanwhile, applies only to employees who have been employed for at least 30 days. These employees are eligible for up to an additional 10 weeks of family leave (beyond the two weeks of paid sick leave described above) if they are unable to work because

they need to care for a child whose school or place of care is closed for reasons related to COVID-19. Those employees are entitled to 2/3 of their regular rate of pay or 2/3 the applicable minimum wage (whichever is higher) up to \$200 a day (for a total maximum of \$10,000).

Notice Requirements

Finally, employers subject to the FFCRA must post a notice of these requirements prepared or approved by the Department of Labor "in conspicuous places on the premises of the employer where notices to employees are customarily posted." Given that many employees are teleworking, though, an employer may also satisfy this requirement by e-mailing this notice to employees or posting it on an employee information website.

EXCEPTIONS TO THESE REQUIREMENTS

Yes. First, small businesses with fewer than 50 employees may qualify for an exemption from the expanded family medical leave requirements "if the leave requirements would jeopardize the viability of the business as a going concern." Second, employers of health care providers or emergency responders may exclude employees from the expanded family medical leave requirements as well.

FFCRA IN RELATION TO ARIZONA'S EXISTING EARNED PAID SICK LEAVE

It is completely separate. The emergency sick leave portion of the FFCRA "does not affect employers rights or benefits under any other law, collective bargaining agreement, or existing employer policy." Arizona's existing paid sick leave laws, meanwhile, provide that they shall not "be interpreted or applied so as to create a conflict with federal law." Paid sick leave under the FFCRA (which must be related to COVID-19) is in addition to, and cannot be substituted with, existing accrued sick leave under Arizona state law or that is otherwise provided by the employer.

OTHER CONSIDERATIONS AT PLAY

Arizona Governor Doug Ducey implemented a shelter-in-place order effective March 31, 2020 that effectively closes all "non-essential" businesses in Arizona. Similarly, Arizona schools have been closed for the rest of the year. As a result, Arizona employers must now quickly adapt. Employees whose in-person presence was an essential function of the position may now be permitted or required to work remotely. Many employees may need flexibility in taking time for childcare given school closures (with the alternative being that they can take leave under the expanded family leave coverage of FFCRA). These matters will certainly affect the prevalence of employees seeking leave, and employer obligations to provide leave.

Our firm remains open and happy to help with any questions you have about the Families First Coronavirus Response Act and its requirements. If you have any questions, please do not hesitate to contact [Gordon Lewis](#) or [David Potts](#). Our contact information is below.

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Gordon Lewis has more than 25 years of experience representing public and private employers in all manner of employment issues, policies and practices. He defends employers against claims involving wrongful discharge, racial discrimination, sexual discrimination and harassment (including same-sex sexual harassment), age discrimination, disability discrimination, civil rights violations, Family and Medical Leave Act, Unfair Labor Practice charges, and wage and hour claims.

David Potts focuses his practice on employment law, general civil litigation, commercial and business litigation, and wrongful death and personal injury defense. He has authored articles on claims issues, vicarious liability, and National Labor Relations Board rulings on workplace rules, concerted change and protected activity.