

**What to do if your employee tests positive for COVID-19:  
Employer COVID-19 Checklist:**

**Soo Yeon Lee, Esq.**

**Every employer now faces a real possibility that one of their employees will test positive with COVID-19. Here's a checklist for employers in responding to a case of COVID-19 in the workplace.**

- Notify the employee's co-workers who may have come into contact with employee at work within the past 14 days that they may have been exposed to COVID-19 and may wish to see a healthcare provider.
- Do not identify the infected employee by name and do not make any references that would allow the co-workers to guess the identity of the employee.
- Consider how to allow affected employees to self-quarantine including whether sick leave may be available.
- Ensure appropriate steps are taken consistent with the CDC guidelines including disinfecting the areas in the workplace which the diagnosed employee came into contact.
- Treat 'suspected but unconfirmed' cases of COVID-19 the same as a confirmed case.
- Properly document leave requests, and have a leave form for this purpose ready.
- For workers critical to the business's infrastructure who have been exposed or test positive for COVID-19, consider this CDC guidelines:  
<https://www.cdc.gov/coronavirus/2019-ncov/downloads/critical-workers-implementing-safety-practices.pdf>
- Conduct screenings for COVID-19 symptoms:
  - Employers may take their employees' temperature, however, treat any information collected as confidential medical information. Provide the screeners with proper protection and the proper screening equipment (thermometer, screening station, sanitation procedure, etc.)
  - Employers may ask specific questions about COVID-19 such as whether the employee has experienced flu-like symptoms or has traveled out of state in the previous 14 days. Consider using a written questionnaire though treat it as a confidential medical record.
- Develop and implement an on-site social distancing policy. The policy can include alternative scheduling to avoid crowding for arriving for and leaving the workplace. Pay particular attention to common areas such as kitchen, break rooms, conference rooms. Make provisions for sanitation and janitorial services.
- All sensitive health information must be managed and treated as separate, confidential information and maintained in a confidential medical record.
- Train HR personnel and managers on how to respond to Covid-19 cases and issues.
- Become familiar with the Emergency Paid Sick Leave and the Family and Medical Leave Act under the Families First Coronavirus Response Act.

**COVID-19 Paid Leave Under The Families First Coronavirus Response Act (FFCRA)**

All businesses are affected by COVID-19 crisis whether it be by sick employees, their sick family members, or school closures. Congress enacted the FFCRA to address employer paid leave. The Act became effective on April 1, 2020 and applies to employee leave taken between April 1, 2020 and December 31, 2020. Here is how it works:

**1. It applies to small business, namely employers with fewer than 50 employees.**

Although the FMLA normally applies to employers with 50 or more employee, this new provision with the FFCRA applies to employers with fewer than 500 employees. This means employers with fewer than 50 employees are covered by the FFCRA, including nonprofits and religious organizations.

**2. COVID-19 Related Paid Leave**

The FFCRA i) creates a new emergency paid sick leave program for six (6) qualifying reasons; and ii) expands the existing family and medical leave under the Family and Medical Leave Act (FMLA).

The FFCRA's paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.

**Qualifying Reasons, Corresponding Leave Period and Pay Rate**

Qualifying Reason	Corresponding Leave Period	Pay Rate
<ol style="list-style-type: none"> <li>1. Employee is subject to Federal, State, or local quarantine or isolation order related to COVID-19;</li> <li>2. Employee has been advised by a health care provider to self-quarantine related to COVID-19;</li> <li>3. Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.</li> </ol>	Up to 80 hours for full time employee; average hours over a two-week period for a part time employee.	Higher of regular pay or minimum wage, up to \$511 per day and \$5,110 in aggregate.
<ol style="list-style-type: none"> <li>4. Employee is caring for an individual subject to an order described in (1) or self-quarantine as described in (2)</li> </ol>	Up to 80 hours for full time employee; average hours over a two-week period for a part time employee.	Higher of 2/3 regular pay or 2/3 the applicable minimum wage, up to \$200 per day and \$2,000 in aggregate
<ol style="list-style-type: none"> <li>5. Employee 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</li> </ol>	Up to 12 weeks (at 40 hours a week) for a full time employee; up to 12 weeks (normal number of hours) (2 weeks of new paid sick leave, followed by 10 weeks of expanded family and medical leave)	Higher of 2/3 regular pay or 2/3 the applicable minimum wage, up to \$200 per day and \$12,000 in aggregate
<ol style="list-style-type: none"> <li>6. Employee is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.</li> </ol>	Up to 80 hours for full time employee; average hours over a two-week period for a part time employee	Higher of 2/3 regular pay or 2/3 the applicable minimum wage, up to \$200 per day and \$2,000 in aggregate

### **3. There is a narrow small business exemption.**

There is a small business exemption, but a narrow one. Employers, including religious or nonprofit organizations, with fewer than 50 employees are exempt from providing paid sick leave *due to school or place of care closures for COVID-19 reasons* when doing so would jeopardize the viability of the small business as a going concern (at least one of three conditions described by the Department of Labor has to be satisfied).

### **4. FFCRA does not apply in cases of layoffs or furloughs**

Employees on layoff or furlough are not entitled to benefits under FFCRA until they return to work. What this means is that if an employer sent an employee home and stopped paying because it does not have work for the employee to do – whether the employer closes the workplace for lack of business or because it is required to close pursuant to the stay at home order, the employee will not get paid sick leave (in which case, the employee may be eligible for unemployment benefits).

### **5. Employee must provide documentation.**

The employee must provide supporting documentation, including quarantine and self-isolation orders, as well as documents indicating that a school or daycare has closed.

### **6. Documenting Leave Requests and Tax Credits**

Eligible Employers may claim tax credits for qualified leave wages paid to employees on leave due to paid sick leave or expanded family and medical leave for reasons related to COVID-19 for leave taken between April 1, 2020 and December 31, 2020. The credits are fully refundable because the Eligible Employer may get a refund if the amount of the credits is more than certain federal employment taxes that the Eligible Employer owes.

Having an *Emergency Paid Sick Leave or Emergency Family and Medical Leave Request* form will help obtain the following necessary information the employer needs in order to claim tax credits. The following information is needed:

1. The employee's name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement that the employee is unable to work, including by means of telework, for such reason.

In the case of a request for leave based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee (e.g. a family member), that person's name and relation to the employee.

In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

The following *additional documentation* should be maintained by the employer for at least four years after the date the tax becomes due or is paid, whichever comes later.

1. Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework and qualified sick leave and qualified family leave.
2. Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages.
3. Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, that the employer submitted to the IRS.
4. Copies of the completed Forms 941, Employer's Quarterly Federal Tax Return, that the employer submitted to the IRS (or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer's entitlement to the credit claimed on Form 941).

The payroll credits for paid qualified sick leave wages and paid qualified family leave wages apply to those wages paid for periods beginning on April 1, 2020 and ending on December 31, 2020. While the wages can only be for periods of leave between April 1, 2020, and December 31, 2020, a payment of qualified leave wages that is made after the end of this period may nonetheless be eligible for the credits if the wages are for leave that an employee took between April 1, 2020, and December 31, 2020.

#### **7. This posting is required.**

Each covered employer must post a FFCRA poster in a conspicuous place on its premises. An employer may satisfy this requirement by emailing or direct mailing this notice to employees or posting this notice on an employee information internal or external website. It should be given to all new hires, but not to employees who have been terminated or laid off.

[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)

**\*\*** The information contained here has been prepared for informational purposes only and is not legal advice. This material describes issues in general terms, and good legal advice required detailed analysis of particular facts and circumstances.

