



Paid Leave for COVID-19 Legal/Legislative Report March 24, 2020

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

To combat the COVID-19 pandemic, Congress has acted swiftly to provide relief to many American families who are suffering economic hardship caused by the outbreak. On March 18, 2020, Congress passed the Families First Coronavirus Response Act (FFCRA) to help alleviate some of the financial burdens felt by American households. The law will take effect April 2, 2020, and will expire on December 31, 2020.

The FFCRA expands the Family Medical Leave Act to all businesses and nonprofit organizations with fewer than 500 employees. Christian schools are not exempted and must comply with the mandates of the law or face potential civil and criminal penalties, including fines and possible jailtime. The FFCRA contains two main provisions that Christian schools must follow: paid sick leave and paid family and medical leave. Importantly, Christian schools will need to **post notices of these changes in paid leave policy** in a conspicuous place for their employees to see. [Access free posters at the Department of Labor (dol.gov) when posters with the changes become available.]

PROVISION 1: EMERGENCY PAID SICK LEAVE

Qualifications for Paid Sick Leave

Under the Emergency Paid Sick Leave provision, eligible employees can take paid sick leave for the following reasons:

- a. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
- b. The employee is advised **by a health care provider** to self-quarantine.
- c. The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.
- d. The employee is caring for an individual who is subject to a federal, state, or local quarantine order or is caring for an individual who has been advised by a health care provider to self-quarantine.
- e. The employee is caring for the employee's child if the child's school or place of care is closed due to COVID-19.
- f. The employee is under similar quarantine or self-isolating orders due to caring for a child or other family member.

Employee Benefits

Employers are required to provide full wages (up to \$511 per day) to employees who request sick leave for reasons *a*, *b*, and *c* above. Employers are required to provide at least two-thirds of normal wages (up to \$200 per day) to employees who request sick leave under reasons *d*, *e*, and *f* above.

Simply put, if an employee is requesting leave for **himself**, whether he is quarantined or experiencing COVID-19 symptoms, he is entitled to **full wages** during his absence. If the employee is requesting leave to care for **someone else**, he is entitled to **two-thirds of his wages** during his absence.

Employers must provide an employee **10 days (up to 80 hours)** of sick leave either for himself or to care for another individual who is quarantined, suffering symptoms, or experiencing a school closure due to COVID-19. There is no length of service requirement for employees for paid sick leave. Employees are eligible immediately upon hire.

Part-time Employees

Part-time employees are also entitled to paid sick leave. The rate of their pay would be based on the average number of hours the employee worked during the previous 6 months.

PROVISION 2: EMERGENCY FAMILY AND MEDICAL LEAVE

Qualifications for Family and Medical Leave

Under the Emergency Family and Medical Leave provision, an employee who is unable to work or telework can take up to **12 weeks of job-protected leave** to care for the employee's minor child (under 18 years old) if the child's school or place of care is closed due to a COVID-19 related public health emergency. Leave is also available to employees who are sick with COVID-19, are caring for a family member who is sick with COVID-19, or are on a mandatory quarantine or shelter-in-place order. The employee must have been employed for at least 30 days to take advantage of the 12-week medical leave provision.

Employee Benefits

The first 10 days of family and medical leave are **unpaid**; however, an employee can use the 10 days of paid sick leave (see above) to cover the first 10 days of family and medical leave. After the first 10 days, an employer must provide at least **two-thirds** of an employee's normal wages for the remaining 10 weeks of leave (up to \$200 per day or a total of \$10,000 per employee).

Employees who take paid family and medical leave are guaranteed job protection. They must be returned to the same or equivalent position upon returning to work at the end of the 12-week period. Employers with fewer than 25 employees may not have to provide reinstatement if the position no longer exists upon resuming regular business. However, a reasonable effort to return the employee to a similar role must be demonstrated.

Part-time Employees

Part-time employees are also entitled to paid family and medical leave. The rate of their pay would be based on the average number of hours the employee worked during the previous 6 months.

Employer Exemptions

The FFCRA does allow the Secretary of Labor to **exempt an employer of fewer than 50 employees** from the Emergency Family and Medical Leave provisions only "when the imposition of such requirements would jeopardize the viability of the business as a going concern." The Department of Labor is expected to issue guidance in April on how businesses and tax-exempt organizations can seek an exemption from providing the 12 weeks of paid leave.

The AACCS is actively working with the Department of Labor to obtain a voluntary exemption from this provision for private schools that wish to be exempt. However, until the Department of Labor issues guidance on how to seek an exemption, **Christian schools should continue to pay an employee who requests time off due to COVID-19.**

REIMBURSEMENTS

Christian schools can receive a **100%, dollar-for-dollar reimbursement** for paid leave provided under the FFCRA. The mechanism the IRS is using to supply reimbursements is the quarterly payroll tax. Typically, an employer is required to withhold Social Security, Medicare, and federal taxes from an employee's paycheck. Employers then deposit those withheld taxes to the IRS on their quarterly payroll taxes. Under the FFCRA, **an employer can now retain an amount of payroll taxes equal to the amount he is providing his employees as paid leave.**

For example, an employer who typically deposits \$8,000 in payroll taxes but is required to provide \$5,000 paid leave to his employees due to COVID-19 will be allowed to redirect \$5,000 of his payroll taxes to cover the paid leave. He would need to deposit only the remaining \$3,000 to the IRS as payroll taxes. If, however, the employer must pay more in paid leave than he would typically withhold in payroll taxes, he may file a request with the IRS for an accelerated payment. Guidance on how to request an accelerated payment will be announced in the coming weeks.

CONCLUSION

As noted above, the Families First Coronavirus Response Act will go into effect on April 2, 2020. Any sick or family and medical leave requested before that time would fall under a school's existing paid leave policies. In addition to this federal law, some states are also enacting their own versions of emergency paid leave. We suggest that you check with your state on any additional requirements you may have to follow. It would also be prudent to **retain complete records of any and all action taken as a response to the COVID-19 crisis.** Legislation currently being

debated may make provision for private schools to participate in additional benefits including equitable service funds, disaster aid, and unemployment benefits for school employees who are laid off during the crisis and recovery.

The AACS will continue working with the IRS, Department of Labor, and Congress to ensure that Christian schools are able to operate free of burdensome requirements that hinder their vital ministries. We will continue to send out updates as negotiations with the federal government progress.

The information contained in this Legal/Legislative Report is being offered as educational information only and should not be taken as legal or professional tax advice. In addition, this is our analysis based on information currently available, and this analysis is subject to change as additional information is released.