

# Frequently Asked Questions

## Families First Coronavirus Response Act

### **1. When is the Families First Coronavirus Response Act (the “Act”) effective?**

The Act was signed March 18, 2020 and is effective April 1, 2020.

**(Updated answer March 26, 2020)**

### **2. I’m an employer with 500 or more employees. Do the Emergency Paid Leave and Expanded FMLA provisions apply to me?**

No, those sections of the law only apply to employers with fewer than 500 employees. We still recommend reviewing your leave and sick pay policies and consider offering similar leave if practical for your business. Should an employer with 500+ employees adopt the expanded FMLA or sick leave provisions, the employer will not be eligible for tax credits to defray the cost.

### **3. I’m an employer with fewer than 500. Do the Emergency Paid Leave and Expanded FMLA provisions apply to me?**

Generally, yes. As written the provisions apply to any employers with fewer than 500 employees, however small businesses with fewer than 50 employees may be exempt if leave would jeopardize the viability of the business. The Department of Labor issued FAQs March 24 that state employers should document why the business meets the exemption criteria, which will be outlined in future regulations. Employers do not need to file anything at this time. While small employers may find it useful to begin building their case for exemption, without the exemption criteria it may be hard to determine.

**(Updated answer March 26, 2020)**

### **4. I’m an employer currently not subject to the FMLA. Does this mean we are now subject to all aspects of FMLA or only those related to COVID-19?**

The Expanded FMLA provisions only apply in the specific circumstances related to COVID-19. No other FMLA circumstances will apply to employers who are not otherwise subject to FMLA due to size.

### **5. If someone goes on leave prior to April 1, will the law apply?**

No, the provisions only apply once the law is effective. Any leave prior to that date would not be covered. This doesn’t mean an employer cannot allow a paid leave prior to that date, but tax credits would not be available prior to the Act’s effective date.

**(Updated answer March 26, 2020)**

**6. Is Emergency Paid Sick Leave applicable to all sicknesses or only COVID-19 related?**

Emergency Paid Sick Leave is only applicable to COVID-19 related situations such as the employee's own quarantine, COVID-19 symptoms, care of another individual with COVID-19 symptoms or quarantine orders, or when caring for a child whose school or childcare is unavailable.

**7. Does this apply to care of any child or only those under 18?**

It applies only to the care of children under the age of 18.

**8. Our employees can telework, even if schools are closed. Does this still apply to us?**

No, the Emergency Paid Leave and Expanded FMLA provisions only apply to employees who are unable to work/telework.

**9. Our standard leave policy requires the use of PTO prior to taking unpaid leave. Can we still enforce this?**

No, employers are not allowed to require employees to use PTO prior to using Emergency Paid Sick Leave or participating in the Expanded FMLA Leave program.

**10. If we furlough employees, can they still receive Emergency Paid Sick Leave or Expanded FMLA Leave?**

It depends. If you keep employees on your payroll as active but on leave (as is usually the case for a furlough), they are eligible for Emergency Paid Sick Leave and Expanded FMLA effective April 1, 2020. If you lay off employees and they are no longer active on payroll, they are not eligible for these programs.

**(Updated answer March 26, 2020)**

**11. Will FirstPerson provide any FMLA policies or notices?**

Yes, FirstPerson will provide sample policies for both the Emergency Paid Sick Leave and Expanded FMLA programs. The Department of Labor provided a model notice to employees, which you can access it here: <https://www.dol.gov/agencies/whd/pandemic/ffcrq-questions>.

**(Updated answer March 26, 2020)**

**12. Can we require employees to use PTO to supplement the one-third of pay that is not covered with expanded FMLA?**

Although this has not yet been specifically addressed or clarified, it's likely no, as employers are not allowed to require the use of PTO.

**13. Will FMLA paperwork and certification be required just like traditional FMLA leave?**

Documentation is likely required but we are awaiting additional guidance from the Department of Labor.

#### **14. Which employees do I count to determine if I need to comply with the Families First Act?**

You will need to count employees as of the date someone is taking leave (likely the April 1 effective date). Any employee on your payroll is counted, including part-time, temporary and seasonal employees. You will also need to count any employees on a leave.

If your organization has common ownership with other organizations, you will need to use the FLSA's joint employer test and the FMLA's integrated employer test to determine if a group of employees is counted as a single employer or can continue as separate entities. If two or more organizations are considered a joint or integrated employer, you will need to count all employees together toward the 500-employee threshold. If the organizations are not considered joint or integrated employers, you will treat each organization separately for purposes of the Act.

Additional information to help you determine if you may be a joint employer or integrated employer can be found on the Department of Labor's website:

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/employerguide.pdf>

**(Updated answer March 26, 2020)**

#### **15. Can telehealth services actually diagnose or will they just refer to an in-office provider or testing center?**

This area is still developing within the healthcare industry. Based on feedback from our industry partners, we believe a telehealth provider will triage your symptoms and determine if you have a condition that can be treated (such as a sinus infection, pink eye, or similar), or if you are exhibiting symptoms consistent with COVID-19 virus. If you are exhibiting symptoms consistent with the virus, the telehealth provider will direct you to a testing or treatment facility to confirm your illness.

#### **16. Does this apply to religious organizations?**

We believe it applies to all organizations who meet the defined criteria, regardless of industry.

#### **17. If an employee has already exhausted FMLA for another circumstance, can they receive additional leave under the Expanded FMLA if they are unable to work and children are out of school/daycare?**

Although the law is not clear on this answer, most legal interpretations say that an employee who already took standard FMLA but needs to take additional FMLA under the new Public Health Emergency Leave provision, FMLA will likely reset. We are hopeful that clarification will be issued in DOL guidance.