



FAMILIES FIRST CORONAVIRUS RESPONSE ACT: WHAT CHURCHES NEED TO KNOW

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Families First Coronavirus Response Act

What does it do?

- Requires paid leave for parents to care for children who are out of school/daycare due to COVID-19
- Requires paid sick leave for employees due to specific issues related to COVID-19
- Provides a refundable payroll tax credit to employer for costs of paying leave

Families First Coronavirus Response Act

When is it effective?

- For leave taken between April 1, 2020 and December 31, 2020
- The law expires December 31, 2020

The Act is not retroactive.

Families First Coronavirus Response Act

Who does it apply to?

- Employers engaged in commerce or in any industry or activity affecting commerce AND
- Having fewer than 500 employees

If a church has fewer than 500 employees and it is affecting commerce, the leave provisions will apply to the church.



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Families First Coronavirus Response Act

Do these laws apply if I already give my employees paid time off?

- YES. These leave laws are on top of what an employer already provides, and an employer cannot force an employee to use employer-provided leave first
- An employer cannot reduce the employee's paid time off for taking leave under these laws
- Also be aware of state and local paid leave laws

Engaged in or Affecting Commerce

Is my church engaged in/affecting commerce?

- “Commerce” includes both for-profit and not-for-profit operations, and can include church operations
- Interpreted very broadly by courts
- Depends on size of church and nature of operations

Engaged in or Affecting Commerce

Some factors indicating that a church may be affecting commerce:

- Operation of school or any business
- Operation of a camp
- Sale of products to out-of-state persons
- Television, radio, or web broadcasting
- Employees travel out of state
- Church has members out of state
- Use of mail/wires for out-of-state-communications

FMLA: Paid Public Health Emergency Leave

Who is covered under FMLA paid leave?

- All employees who have been employed 30 calendar days or longer
- Does not matter whether employee is FT, PT, exempt, non-exempt

FMLA: Paid Public Health Emergency Leave

Why can an employee take Public Health Emergency Leave?

- Employee is unable to work, including unable to work remotely, because the employee's child's school or daycare is closed due to a public health emergency with respect to COVID-19

FMLA: Paid Public Health Emergency Leave

How much leave can an employee take?

- Up to twelve weeks– but the first 10 days are unpaid, unless employee elects to be covered by employer-provided time off (vacation, personal days, etc.) or FFCRA Paid Sick Leave
- Employee required to give notice “as is practicable”

FMLA: Paid Public Health Emergency Leave

How much pay are employees entitled to?

- After the first 10 days, 2/3 of their regular pay, up to \$200 per day; cap of \$10,000 in the aggregate

What about part-timers?

- Part time employees are entitled to leave for the average number of work hours/day in a two-week period
- If schedule varies, use a six-month average of work hours/day



FMLA: Paid Public Health Emergency Leave

Are there exceptions from complying with this law for any employer?

- YES– if ability of the employer to continue as a business is jeopardized, then the employer can apply for exemption
- Certain provisions also may not apply to employers with fewer than 50 employees

Employers are required to restore employees to a like position after leave; employers with fewer than 25 employees may be exempt.

Paid Sick Leave

Who is covered under the Paid Sick Leave provisions?

- All employees, regardless of employment duration

How much leave can an employee take?

- For full-time employees, up to 80 hours
- For part-time employees, average number of work hours in a two-week period
- Employer can require employee to follow reasonable notice procedures after taking first day of leave

Paid Sick Leave

Paid sick leave is only for the following 6 reasons:

1. Employee has been directed or ordered to quarantine or isolate related to COVID-19 by the federal, state, or local authorities
2. Employee has been advised by a healthcare provider to self-quarantine because of COVID-19
3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis

Paid Sick Leave

4. Employee is caring for an individual that is subject to a directive or order as described in #1 and #2
5. Employee is caring for their child because the child's school or daycare has been closed because of COVID-19
6. Employee is experiencing any other substantially similar condition (to be specified by the Secretary of Health and Human Services)

Paid Sick Leave

How much pay are employees entitled to?

- For reasons 1-3, relating to employee's health, regular pay up to \$511/day; capped at \$5110 in the aggregate
- For reasons 4-6, not relating to employee's health, 2/3 pay up to \$200/day; capped at \$2000 in the aggregate

Paid Sick Leave

Are there exceptions from complying with this law for any covered employer?

- No— unlike the FMLA paid Public Health Emergency Leave, all employers must comply

Payroll Tax Credit

How can my church afford to give paid leave?

- Fully refundable payroll tax credit “qualified” sick leave and family leave “wages” paid for leave
- Can include dollars paid for group health plan while employee is on leave
- If amount of leave paid exceeds what employer pays in payroll taxes, IRS sends you a check

Payroll Tax Credit– WAGES

What are “qualified sick leave and family leave wages?”

- The law defines wages by referring to the Internal Revenue Code
- For lay employees, it is clear

Ministers and the Payroll Tax Credit

But can our church take a payroll tax credit for leave costs paid to ministers?

- “Qualified” sick and family leave wages excludes ministerial employment
- Self-employment tax credit likely an option

Payroll Tax Credit

How does that work *exactly*?

- Churches pay the employer's share of payroll taxes— Social Security and Medicare taxes— for their lay employees, and withhold employee portion
- Churches withhold federal income tax for lay and clergy employees (usually)
- Deposited with IRS and quarterly payroll tax returns filed

Payroll Tax Credit

- The Medicare, Social Security, and withheld federal income taxes may be retained by church that is paying employees on leave under the Act
- Amount retained cannot exceed statutory caps, plus cost of group health plan coverage
- If church pays more in leave than it pays/withholds in payroll taxes, the church files a claim with the IRS and receives a payment

Payroll Tax Credit Example

- Church administrator makes \$300/day and goes on FMLA leave. Admin elects to be covered by Paid Sick Leave for the first 10 days, and so is paid at \$200/day for 12 weeks
- At the end of every quarter, church normally has deposited \$10,000 in total Medicare, SS, and withheld federal income taxes
- Church spends \$12,000 on leave costs for Admin, plus \$800 on group health plan coverage for Admin
- Church retains entire deposit and files claim for \$2800 for in group health plan coverage for Admin

Frequently Asked Questions

- Can we pay our employees more than the 2/3 required by the Act?
- Do we need to notify our employees of this new law?
- Is there an anti-retaliation provision?
- What about recordkeeping?