



**COVID-19**

UPDATE:  
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**Coronavirus / COVID-19  
Response Team**

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**FFCRA Refresher**

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## Today's Topics

- FFCRA: The Original
- FFCRA: The Amendments
- MJ FAQs

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## FFCRA: The OG

## FFCRA: The Original

- Effective: April 1, 2020 - December 31, 2020
- Public sector; private sector with less than 500
- Emergency Paid Sick Leave Act:
  - Immediate eligibility
  - Up to two weeks (max. of 80 hours) of paid leave for one of six COVID-19 virus related reasons
- Expanded FMLA:
  - 30 calendar day eligibility
  - Up to 12 weeks (10 paid) of partially paid leave to care for a child whose school or place of care is closed because of a COVID-19 related reason

## EPSLA Reasons

1. Subject to a federal, state, or local quarantine or isolation order related to COVID-19 (\$511/day cap)
2. Has been evaluated by a health care provider to self-quarantine related to COVID-19 (\$511/day cap)
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis (\$511/day cap)
4. Is caring for an individual subject to #1 or #2 (2/3 pay, \$200/day cap)
5. Is caring for his/her child whose school or place of care is closed (or child care provider unavailable) due to COVID-19 related reason (2/3 pay, \$200 day cap)
6. Substantially similar condition as determined by Fed. DHHS. (2/3 pay, \$200 day cap)

## FFCRA: Child Care Leave

- **Only available** if no other suitable person is available to care for the son or daughter during the period of leave.
- **Not available** if the school or child care provider is closed for a non-COVID-19 related break or any other reason not related to COVID-19

## FFCRA: The Remix

## FFCRA: The Amendments

- Related to a legal challenge to four specific areas of the “OG”
  - Work availability requirement
    - **Double down**
  - Health care provider definition
    - **Revise**
  - Intermittent leave
    - **Double down**
  - Documentation
    - **Revise**

## 1. Work Availability Requirement

- DOL's position: The inability to work must be solely caused by the qualifying condition (e.g., one of the 6 qualifying reasons for leave)
- Court's decision: The DOL cannot require that employees actually be working, or the employer have work for them to do, in order to take FFCRA leave.
- DOL's response: The employee's need for leave must be the sole reason the employee is not working. Employees on furlough or layoff are not eligible.

## 2. Definition of "Health Care Provider"

- DOL position: Employers may exclude from FFCRA leave any "health care providers" and defined the term broadly (i.e., employees of certain types of employers).
- Court's decision: DOL definition is "vastly overbroad."
- DOL's response: Revised definition; those who are employed diagnostic services, preventative services, treatment services, or other services that integrated with a necessary to the provision of patient care

### 3. Intermittent Leave

- DOL's position: In an effort to limit the risk that an employee might spread COVID-19 to other employees, intermittent leave should be limited to certain situations, and employers must consent before an employee can take intermittent leave.
- Court's decision: Agree it should be limited, but employer consent is not required.
- DOL's response: Expanded rationale, but intermittent FFCRA is available only when the employer consents.

### 4. Documentation Requirement

- DOL's position: Employee required to submit documentation substantiating the employee's need for leave ***prior to*** taking FFCRA leave.
- Court's decision: Employer can no longer require that the employee submit this documentation ***prior to*** the employee taking leave.
- DOL's response: Documentation may be given as soon as practicable, but is not required prior to employee taking leave.

## Things That Make You Go Hmmm . . .

## Questions

**Q:** If an employee is home now because of PA 238, does that qualify for FFCRA?

**Q:** Do I have to pay my employees for being out if they already used up the allotted 80 hours?

**Q:** What about caring for grandchildren?



## Questions (Cont.)

**Q:** Does FFCRA leave (either EPSLA or Expanded FMLA) have to be used all at once, or can it be for multiple COVID-19 related events?

**Q:** Does an employee qualify for FFCRA (EPSLA or Expanded FMLA) if their child's school just transitions from in-person learning to remote learning?

## What About Temps?

- For counting employees
- For providing leave

## Questions

- Q: I'm a "health care provider," right?
- Q: I'm an "emergency responder," right?
- Q: How much do I pay and when?
- Q: How can my employee establish he/she is a "close contact"?
- Q: What documentation can I require?

## Questions

- Q: Will FFCRA be extended into 2021?
- Q: What does 2021 look like?

## This Is Literally All I Know . . .

When someone asks me what  
my future holds



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## Back to Work Resource Center

<https://resources.millerjohnson.com/>

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Resource Center

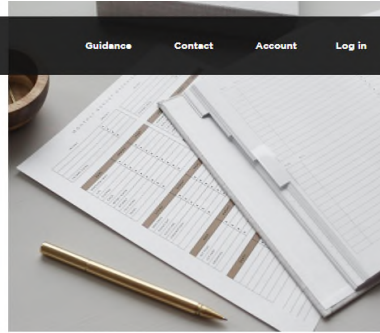
Guidance Contact Account Log in

Our **Back to Work Resource Center** provides a single source option for employers who are wrestling with the legal and practical consequences of a changed world.

For less than the cost of a typical handbook update, you gain access to an extensive collection of resources and Miller Johnson work product that we are confident will provide meaningful support to your efforts to navigate waters that are not only choppy but continuously changing direction.

Here is a sampling of what subscribers will find:

- Forms, Plans and Policies - we have drafted templates for you to put into service immediately
- Practical Guidance - tools to effectively, safely and confidently return to work incorporating best practices from outside organizations, including community partners such as Spectrum Health
- Industry Specific Guidance - pages devoted to industries singled



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