

## **The Families First Coronavirus Response Act (FFCRA)**

What does it mean for Kansas school employers?

### **Does the Act cover public schools?**

Yes. Under the terms of the Act, “Covered Employer” includes any public agency that employs at least 1 person. Private businesses are exempt if they employ more than 500 people, but that rule does not apply to public school districts, who are considered “covered employers” and are bound by the Act.

### **When does the Act take effect? When does it expire?**

It became effective 15 days after signing, or April 1, 2020. It expires December 31, 2020.

### **What conditions make an employee qualified for leave?**

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
5. The employee is caring for his or her son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of the son or daughter is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor.

### **What employees are eligible?**

- Employees who meet one of the six conditions, above, are eligible for emergency paid sick leave (two weeks of paid leave) regardless of their tenure as an employee.
- Any employee who has been employed for 30 days is eligible for expanded FMLA leave (up to 12 weeks, total, of paid leave) under reason 5, above. The FMLA’s usual 12-month, 1,250-hours worked requirement does not apply to employees taking expanded family leave due to the virus emergency.

### **What rights apply to an employee on leave for COVID-19 reasons?**

1. The Emergency Paid Sick Leave Act requires employers to provide up to 80 hours of paid sick leave to an employee who is *unable* to work or telework for any of the reasons stated above.
2. The Act requires employers to provide part-time employees paid sick leave equal to the number of hours, on average, that they work over a two-week period if they are *unable to work or telework* for any of the reasons stated above.
3. If leave is solely due to the need to care for a son or daughter because a school or day care has closed, employees are entitled to take up to 12 weeks combined of Emergency Paid Sick Leave (2 weeks) and Expanded Family and Medical Leave (10 additional weeks). The employee may use the paid sick leave provided by the FFCRA or employer-provided leave for the first two weeks. If the employee opts to use neither the FFCRA-provided paid sick leave or employer-provided leave, the first two weeks of leave under justification number 5 may be unpaid leave.

### **Does the amount of leave available to an employee depend on the reason for taking leave?**

Yes. The Emergency Paid Sick Leave and Expanded Family and Medical Leave are only available for the six reasons stated above. Employees are entitled to two weeks of paid leave under the Emergency Paid Sick Leave Act for conditions 1 through 4 and 6. Employees are entitled to up to 12 weeks of combined paid leave under the Emergency Paid Sick Leave Act and the Expanded Family and Medical Leave Act for leave taken under condition 5. Employees on leave under FMLA for other reasons are not entitled to convert their leave to FFCRA leave unless they qualify under one of the six definitions.

### **If an employee is able to telework, can the employee take Emergency Paid Leave?**

To the extent the employer has duties for an employee, and the employee is able to complete those duties through work or telework, Emergency Paid Sick Leave and Expanded Family and Medical Leave are not available to the employee.

### **Can an employer require that an employee find a replacement employee to cover his or her duties as a condition of granting leave?**

No. This is expressly prohibited under the Act.

### **Is leave provided under the FFCRA in addition to leave already available under the Family Medical Leave Act? Or is it deducted from employee's FMLA allotment?**

- The two weeks paid leave available under the Emergency Paid Sick Leave Act must be provided even if the employee has exhausted FMLA leave for the year.
- Additional FMLA leave is NOT provided for those opting to take up to 10 additional weeks to care for children whose schools have closed or whose day care providers are unavailable due to the emergency (condition 5, above). Leave

taken for this reason would be deducted from the employee's allotment of up to 12 workweeks of leave available under the FMLA during the current 12-month period. If an employee has already taken 12 workweeks of leave under FMLA, the employee may take two weeks of emergency sick leave for reasons 1 through 3, but may not take additional expanded family and medical leave.

**Can employees be required to use accrued sick leave before taking the two weeks of paid leave under FFCRA?**

No. Employers must allow immediate use of the leave provided under FFCRA for any qualifying reason and may not require employees to exhaust other accrued leave before being entitled to leave under the Act.

**Do employees receive full pay when on leave due to the pandemic?**

The amount of pay employees on leave will receive depends upon the reason for taking leave.

- For reasons 1-3, employees receive their regular rate of pay, up to \$511 per day or \$5,110 aggregate over the two weeks.
- For reasons 4 and 6, employees receive two-thirds of their regular rate, up to \$200 per day or \$2,000 aggregate over the two weeks.
- For reason 5, employees may (but are not required to) take the emergency paid sick leave for the first two weeks at two-thirds of their regular rate of pay, not to exceed \$200 per day. Beginning with the third week, the employee would be on expanded family and medical leave for up to ten additional weeks. During this time, the employee is entitled to receive two-thirds of regular pay, up to \$200 per day. In no case is any employee taking leave under reason 5 entitled to more than \$12,000, in aggregate, if they take a full 12 weeks of leave.

**How is pay calculated for hourly employees who work varying schedules?**

Employers must calculate the average number of hours that the employee was scheduled over a 6-month period ending on the date paid sick leave is taken, including hours for which the employee took leave of any type.

**Do employees automatically qualify for leave if their children's school has been closed or daycare is unavailable due to the pandemic?**

Not necessarily. The Emergency Family and Medical Leave Expansion Act defines a "qualifying need related to a public health emergency" to mean "the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health crisis." This definition gives employers some latitude to require employees to show that the leave is

based on a “need for leave to care for a son or daughter.” The age and maturity of the children, as well as whether the employee can reasonably be expected to complete assigned duties through telework, should be taken into consideration.

**Can Employees use the expanded sick leave intermittently while teleworking?**

Yes. If an employee is able to telework, but unable to keep a normal schedule, then the employer and employee can agree to use leave granted under the FFCRA in intermittent increments.

**Can Employees take paid sick leave intermittently while working at their usual worksite?**

Generally, no. For reasons 1 through 4 and 6, leave cannot be taken intermittently. This is because employees taking leave under those provisions are either sick, possibly sick, or possibly being exposed to others who are sick and would increase the risk of spreading the virus to others in the workplace. For reason 5, those who are taking leave solely for the purpose of caring for their child or children whose schools are closed or whose daycare is unavailable due to the emergency may take leave intermittently if the employer agrees.

**Is an employee entitled to take expanded FMLA leave to care for grandchildren whose schools are closed or whose daycare is unavailable due to the COVID-19 emergency?**

No. Expanded FMLA is available only to those who need to take leave to care for a “son or daughter,” which the Act defines as the employee’s own child, including biological, adopted or foster children, stepchildren, legal wards or a child for whom the employee stands in loco parentis. “Son or daughter” is also an adult son or daughter who is 18 years of age or older who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability.

**What notice is required of employees?**

FMLA requires employees to give as much notice to the employer “as is practicable.” Evidence of the need for leave may be required. After the first day of paid leave, an employer may require the employee to follow reasonable notice procedures in order to continue receiving the paid sick leave.

**Are jobs protected for those taking leave under the Act?**

Yes. These are temporary amendments to the Family and Medical Leave Act, but the requirement that an employer make reasonable efforts to restore an employee returning from FMLA leave to the same or an equivalent position when he or she is able to return to work applies, as usual. Additionally, the Act prohibits disciplining or discharging any employee for taking leave under the Act.

**Are employers obligated to continue providing health coverage to those who take paid sick leave or expanded family and medical leave?**

Employees on paid sick leave or expanded family medical leave are entitled to continued group health coverage on the same terms as if they continued to work.

**Can employees use employer-provided sick leave concurrently with leave provided under the FFCRA?**

Employees cannot take employer-provided leave simultaneously with leave provided under the FFCRA unless the employer agrees to permit it. Employers may (but are not required to) permit employees to expend accrued sick or vacation leave to supplement the two-thirds of regular wages allotment under the Act to allow employees to be paid their normal earnings.

**Are employers required to provide notice of these rights?**

Yes. Employers must post a notice of FFCRA rights in a conspicuous place on their premises. Since access to school facilities is limited, school employers must also make the information available through other means reasonably calculated to ensure that employees are informed of their rights under the Act. Employers should email employees with a copy of the notice or directions to locate it on district websites.

**Where can I get a copy of the required notice?**

The poster is available in English at <https://governor.kansas.gov/wp-content/uploads/2020/03/EO-20-07-Executed.pdf> and in Spanish at <https://governor.kansas.gov/wp-content/uploads/2020/03/EO-20-07-Executed.pdf>. The U.S. Department of Labor is expected to provide the notice in other languages, as well.