



## COVID-19: Families First Coronavirus Response Act (FFCRA) Webinar

March 25<sup>th</sup> & 27<sup>th</sup>, 2020

# WEBINAR Q & A

Questco recently sponsored two Q&A webinars on Wednesday, March 25 and Friday, March 27, 2020, surrounding the ever-changing landscape of the Families First Coronavirus Response Act and how it pertains to employers and employees. We've compiled all questions and answers presented during the webinars as well as adding additional questions subsequently posed by our Clients. Please note that the responses to these questions are based on the most recent information available and are subject to change or modification based on continuing updates released by various legislative bodies, including the Department of Labor.

### ***Families First Coronavirus Response Act (FFCRA) – H.R. 6201***

#### **Terms used in this Document:**

<b>FFCRA</b>	Families First Coronavirus Response Act
<b>EPSL</b>	Emergency Paid Sick Leave
<b>EFML</b>	Expanded Family and Medical Leave
<b>CARES</b>	Coronavirus Aid, Relief, and Economic Security Act

#### **What are the 6 criteria of the FFCRA that would be considered a qualification for leave if the employee is unable to work or telework?**

- 1) Subject to a federal, state or local quarantine or isolation order related to COVID-19
- 2) Advised by a healthcare provider to self-quarantine in relation to COVID-19
- 3) Experiencing COVID-19 symptoms and seeking medical diagnosis
- 4) Caring for an individual subject to an order related to self-quarantine or who has been advised by a health care provider to self-quarantine in relation to COVID-19
- 5) Caring for a son or daughter if school or childcare is closed or unavailable because of COVID-19
- 6) Experiencing “any other substantially similar condition” specified by the Department of Health and Human Services, in this instance COVID-19

### **FFCRA GENERAL QUESTIONS AND ANSWERS**

#### **Who is a son or daughter?**

Under the act, a “son or daughter” is your own child, which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you have day-to-day responsibilities to care for or financially support. For both the EPSL and the EFMLA, the definition of child will include a child 18 years of age or older with a mental or physical disability who is incapable of self-care due to the disability.

#### **Are there any specific guidelines for contract employees that physically work in a corporate office?**

Temporary or contract labor workers are not considered employees and would not be covered under the law as it relates to your requirement to provide paid leave, with the caveat that if they were misclassified and should have been treated as employees when they weren't, the company could be liable for failure to afford them leave.

#### **We are a very small company. At the present time, there are only seven employees. All employees are salary employees or exempt employees. How does this apply to us? How we can protect the company and the employees at the same time? Can salaries be reduced for us to keep operating? How can those decreases be achieved?**

If you have exempt workers, you must pay them at least the minimum required weekly salary for any hours they work in a workweek. Any other salary reduction decision is subject to business operational requirements, but you cannot reduce the salary below \$35,568 without impacting their exempt status.

#### **If the employer reduces an employee's scheduled work hours, can the employee use paid sick leave or expanded family and medical leave for the hours that he/she is no longer scheduled to work?**

No. If the employer reduces an employee's work hours because it does not have work for he/she to perform, the employee may not use paid sick leave or expanded family and medical leave for the hours that he/she is no longer scheduled to work. This is because the employee is not prevented from working those hours due to a COVID-19 qualifying reason, even if the reduction in hours was due to COVID-19-related changes in business operations.

The employee may, however, take paid sick leave or expanded family and medical leave if a COVID-19 qualifying reason prevents the employee from working their full schedule. If the employee does that, the amount of leave to which the employee is entitled is computed based on their work schedule before it was reduced.

#### **Does the number of employees relate to individual employer or Questco as a whole?**

The number of employees is determined at the individual employer level. For purposes of the FFCRA, you count the number of employees at the time each leave request is received.

#### **Do employers have a legal requirement to inform the employee of the new leave such as via poster or a memo?**

Each covered employer must post the leave notice in a conspicuous place on premise. An employer may satisfy this requirement by e-mailing or direct mailing this notice to employees or posting this notice on an employee information internal or external website.

**Will Questco be providing the notices for the new leave act?**

Questco has distributed the Department of Labor link to the notice requirement, which can be found at: <https://www.dol.gov/agencies/whd/posters>.

**Our company provides mission critical rugged mobility equipment to Federal, State and Local government as well as healthcare providers. If an employee is a no call and no show for two days and when questioned, says he feels like the world is ending and he doesn't need to work (he is not ill physically), how should this be treated? Should/can we send discharge papers to this employee prior to April 1 so that we are not responsible for his insurance premiums?**

Someone's failure to report in accordance with the established work rules that is not related to one of the six criteria of the FFCRA cannot be protected, but it will depend on the circumstances. If the employee did not follow the proper channels and was expected to come to work, you can dismiss them. You cannot let someone go to avoid providing them leave benefits under the Act.

**Are health care clinics exempt from the FFCRA?**

For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the Act, a "health care provider" is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state's or territory's or the District of Columbia's response to COVID-19.

**Who is an emergency responder under the law?**

For the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the Act, an "emergency responder" is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state's or territory's or the District of Columbia's response to COVID-19.

**Do these rules and the stimulus apply to companies with more than 500 employees as well?**

Specifically, to the extended leave act, this does not apply.

**Are bonuses and/or overtime included as part of "regular rate of pay" in calculation of leave pay?**

The pay is calculated as a two-week average, so overtime and bonuses that are not regular are unlikely to be included.

**If a construction site is shutting down due to COVID-19, can they use this benefit?**

No, if the entire company is shut down prior to the employee qualifying for paid leave under the FFCRA, an employee is not eligible for paid leave. Employees should be instructed to file for unemployment.

**What if they are claiming leave pay to beat the lay-off? Are they still able to be paid?**

The law does not allow the employer to interfere with the rights the employee has under the law, including denial for leave benefits that might be covered. Any employee who qualifies under the 6 covered grounds must be granted leave if they request the leave prior to any termination or furlough notification.

**How do I claim under the 25-employee viability exemption?**

The DOL has clarified that small employers with fewer than 50 employees (not 25), including religious or nonprofit organizations, may claim this exemption if their authorized officer determines one of the following applies:

- Providing EFMLA and/or EPSL childcare leave (school closures and childcare unavailability) would cause the business's expenses and financial obligations to exceed its revenues and cause the business to cease operating at a minimal capacity;
- The employee's absence would entail a substantial risk to the business's financial health or operational capabilities because of specialized skills, knowledge of the business, or responsibilities the employee possesses; or
- There are insufficient workers who are able, willing, and qualified to perform the labor or services provided by the employee requesting childcare leave, and these labor or services are needed for the business to operate at a minimal capacity.

The DOL indicates that school closures/childcare reasons for FFCRA leave (which is reason #5 for EPSL leave and the only reason EFMLA is available) are the only reasons for which this exemption is available (if one of the above criteria is met). This means that smaller employers with fewer than 50 employees, even those that can claim this exemption, are NOT exempt from providing EPSL for reasons #1, 2, 3, 4 and 6 (i.e., the medical/family care related reasons for EPSL).

**Does the small employer exemption apply to healthcare clinics?**

Yes.

**We have less than 500 but more than 50 employees. Is there anything different since we are 501c3 non-profit?**

No, the law does not distinguish between for profit or non-profit; the only qualifier is the "under 500 employees" requirement.

**Can you clarify what the 30-day non-enforcement period means?**

The DOL is providing a 30-day grace period for violations. The DOL will not bring enforcement actions against an employer within 30 days of enactment of the FFCRA (i.e., March 18 through April 20, 2020). During this period of time, if the employer in good faith made an error in complying with the law, the employer will have the opportunity to correct the error within that 30-day period. If deemed a willful violation of the Act, the DOL will take enforcement actions against the employer.



**Is each corporation separate or one entity?**

A corporation is considered to be a single employer but if the corporation has an interest in another corporation and the corporations are separate employers, unless considered a joint employer, they remain independent. There is an integrated employer test for companies that are commonly owned and managed and if companies are considered one and the same under that test, then you would aggregate employees at all entities.

**If we have 70 employees and fire 20, could we apply for an exemption?**

We do not recommend that the decision to terminate 20 employees be made solely on the basis to avoid the requirements under the FFCRA. The small business exemption from the law applies if providing an employee such leave would jeopardize the viability of the business as a going concern. This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- employer employs fewer than 50 employees;
- leave is requested because the child’s school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons; and
- an authorized officer of the business has determined that at least one of the three business conditions described above is satisfied.

**Can we fire and rehire at other corporations every 30 days? Can we lay off employees instead of offering this leave?**

If an employer is trying to manipulate the workforce to avoid paying leave, it is against the law. If you are firing people that would be eligible for leave because they have children at home and hire them 30 days later, it’s not allowed.

**If the coronavirus pandemic threat diminishes, then does this bill still last until the end of the year?**

Until Congress or the President change the law, it is in effect through the end of the year. Any qualifying event until the end of the year would apply.

**Do these rules apply to companies > 500 employees as well?**

The paid leave requirements under the EFMLA, do not apply; however, nothing prevents an employer with greater than 500 employees from offering additional leave.

**Can we modify non-exempt, hourly employee statuses to Per Diem? What impact would this have on their benefits?**

Per diem normally refers to daily allowances paid to employees to cover costs incurred while on a business trip. However, employers can pay employees a daily rate. If the employee works in excess of 40 hours in a workweek, he/she is entitled to overtime pay in accordance with the law. Check with your CSM to determine whether this type of change will impact benefits coverage.

**EMPLOYEE LEAVE REQUESTS**

**When the new leave law goes into effect, are we responsible for paying employees if they are not working due to inability to work from home or not being scheduled hours due to the business slowing down.**

If they cannot work from home and are not providing any services, they can be terminated to avoid payment of wages. If they are covered under one of the six covered criteria and the business is operating (i.e., it was not closed down prior to the FFCRA’s effective date due to lack of business or pursuant to a governmental directive), then they would be paid under the leave law. However, nothing prevents an employer from paying a worker above and beyond their legal obligation.

**If an hourly and/or salary employee is unable to work due to lack of work, what are their options as far as pay? They do have minimal amount of PTO saved, however, not enough to cover for an extended period of time.**

Salaried or hourly employees who are not able to work will not be paid. However, if a worker is unable to work and the reason falls under one of the 6 criteria, the employee will be eligible for the EPSL paid leave and EFML paid leave for those unable to work due to childcare challenges. For other purposes, if they simply cannot work, unless the employer already provides for paid time off, or the state provides for additional paid sick leave, there would be no pay available. They could be laid off or placed on extended leave and apply for unemployment benefits.

**Are you recommending we keep paying employees full-time even though they are not working?**

No, you are not required to pay employees if they are not working. This is an employer’s prerogative. However, to the extent you can afford to continue to pay your employees, we suggest you do so if you wish to take full advantage of special funding provisions authorized under the CARES Act. Certain loans offered to small businesses are forgivable to any business that retains its workers through this disruption.

**If an employee wants to claim EFMLA but another parent is home as well, are they still eligible?**

Yes, the law does not prevent both parents from claiming the benefit.

**In order for an employee to file FMLA to take care of their children while schools are closed, do they have to prove that they have no other family members available to help out?**

The Department of Labor has indicated that sufficient support for the leave request would be a link to the county webpage, letter or other documentation from the provider or school system. There is no requirement to prove the employee is the sole provider of care.

**The law also states under EFMLA, employees are to be paid two-thirds of their regular wage, then in the next paragraph it states, “In no event shall such paid leave exceed \$200 per day and \$10,000 in the aggregate.” What does this mean?**

For employees taking leave for child care, it shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over 10 weeks of paid expanded family and medical leave).

**Under Emergency Paid Sick Days, it states employers are required to pay up to 80 hours paid sick leave, and then states paid leave is not to exceed \$511 per day or \$5110 in the aggregate, again what does that mean?**

For employees taking leave subject to a Federal, State, or local quarantine or isolation order related to COVID-19, has been advised by a health care provider to self-quarantine related to COVID-19, or is experiencing COVID-19 symptoms and is seeking a medical diagnosis, the employee shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

**Please provide clarification on the eligibility under the paid sick leave policy for those employees who we’ve set up to telework but are unable to work due to connection/internet issues.**

The presumption is the employee needs to access the internet to perform his/her job and can’t do so, then the person cannot telework. Paid leave may then be available only if he/she qualifies under one of the 6 conditions. An employer could elect to modify work hours or work duties as well to allow this person to continue to work

**What does this mean for part-time employees? Our understanding is that part-time employees would only get 2-weeks of paid sick leave. Could this be clarified?**

Leave is paid based upon the two-week average of actual hours worked.  
For purposes of the paid sick leave act, a part-time employee is an employee who is normally scheduled to work fewer than 40 hours per week.

In contrast, the EFMLA does not distinguish between full- and part-time employees, but the number of hours an employee normally works each week affects the amount of pay the employee is eligible to receive.

**If an employee needs to stay home to watch children home from school, does this qualify for the 80 hours of PTO?**

Yes, if the company is open for business and the employee is not laid off.

**What documentation do we need from employees to confirm they were directly impacted by COVID-19?**

The DOL has eliminated much of its discussion concerning the specific types of documentation to support a leave request under EPSL and EFMLA, pointing employers instead to applicable IRS forms and information. The IRS does not appear to have published guidance for employers on this issue, but we expect it will do so shortly. For medically necessary reasons for COVID-19, employers may find they need to, as a practical matter, relax traditional documentation standards.

**Does this apply if the employee is not impacted, but we do not have enough work available? (This may or may not be a direct result of COVID-19.)**

No, there is no paid leave requirement if there is no work available. DOL says the employee must be actively available to work or telework to qualify under the FFCRA.

**Is an employee supposed to use accrued leave first and then emergency leave?**

No, an employer cannot dictate to an employee how or whether to use any additional available leave.

**My legal counsel said an employee needs to take 10 days off (either unpaid or taking vacation) before eligible for the FMLA paid leave if they are taking time off because their kids need to be cared for due to a school closing. Is this true?**

This is incorrect. Under the covered childcare component, an employee could take ten days of sick paid leave and then get the remaining 10 weeks of paid leave, but the employee is not required to do so; instead, the employee could elect to take unpaid leave or use other forms of leave for the first 10 days

**For someone with childcare, is the two-weeks paid sick leave part of extended FMLA making the 12 weeks as follows: 2 weeks at 100% pay and 10 weeks at 2/3 pay?**

Yes, that is correct.

**Let’s say an employee is experiencing symptoms and seeking a coronavirus test. If he finds out in 3 days but tells the employer he did not find out for 10 days, how does the employer verify when he actually received the test results? Can the employer ask for proof from the doctor as to when he was told?**

The employee will have to provide the employer with a certificate. The certificate should state the date of the test and results. If an employee lies about the time it took to obtain the results, he can be terminated. If the employer provided the 10 days of leave and turns it out the employee received more leave than he was entitled to, the employer should be able to claim back the overpayment of leave, but at this time there is no guidance on this question.

**For the childcare leave, do we count and pay for federal holidays that children would already have off? Does the leave stop at the original end of school year? Could this leave continue through the summer?**

The law has not made any delineations between carving out time that the school would have been out of session under the normal school schedule. The child does have to be the son or daughter of the employee under the leave. As long as the schools are closed, those employees would be eligible for both the sick pay and the extended FMLA leave for the length of paid leave required under the law.

**Does the 12-week leave have to be consecutive, or can they take one week off here or there?**

Generally, no. Unless an employee can telework, emergency paid sick leave for qualifying reasons related to COVID-19 must be taken in full day increments for qualifying reasons 1, 2, 3, 4, and 6.

For qualifying reason 5, the childcare reason, intermittent leave may be taken but only if the employer consents to the arrangement. For example, if an employee needs to take paid leave related to childcare on Monday, Wednesday, and Friday, but can work on Tuesday and Thursday, the employer may allow this arrangement. The Department of Labor encourages employers and employees to collaborate to achieve flexibility and meet mutual needs.

**If an employee takes the 12 weeks of leave and then comes back to work, can he/she apply for this leave again later in the year?**

No, the maximum amount of leave for childcare is 12 weeks and goes through December 31, 2020.

**May an employee take leave under the Family and Medical Leave Act over the next 12 months if he/she uses some or all of the expanded family and medical leave under the EFMLA?**

An employee may take a total of 12 workweeks of leave during a 12-month period under the FMLA, including the EFMLA. If the employee takes some, but not all 12 workweeks of expanded family and medical leave by December 31, 2020, he/she may take the remaining portion of FMLA leave for a serious medical condition, as long as the total time taken does not exceed 12 workweeks in the 12-month period.

For example, assume an employee takes 4 weeks of EFMLA in April 2020 to care for a child whose school is closed due to a COVID-19 related reason. These four weeks count against his/her entitlement to 12 weeks of FMLA leave in a 12-month period. If he/she is eligible for preexisting FMLA leave and needs to take such leave in August 2020 because he/she needs surgery, he/she would be entitled to take up to eight weeks of FMLA leave.

However, an employee is entitled to paid sick leave under the EFMLA regardless of how much leave he/she has taken under the FMLA. Paid sick leave is not a form of FMLA leave and therefore does not count toward the 12 workweeks in the 12-month period cap. But please note that if an employee takes paid sick leave concurrently with the first two weeks of expanded family and medical leave, which may otherwise be unpaid, then those two weeks do count towards the 12 workweeks in the 12-month period.

**Can we cut everyone’s salary to minimum wage, and then give daily bonus on days they work?**

You are only obligated to pay non-exempt employees for the actual hours they work, at minimum wage or greater, as agreed upon with the employee. Exempt employees have a minimum they have to make a year to keep their exemption. If any exempt employee works any time during a workweek, they must be paid for the entire workweek. If you want to reduce an employee’s salary but keep it above the exempt threshold (\$35,568) you can do that if the employee agrees to the reduced wage in advance of implementing the change in rate of pay. You cannot cut wages retro-actively. Employees must be paid at their regular rate for any hours already worked. You can pay a bonus at any time.

**Does an employee have a right to return to work after taking paid sick leave or expanded family and medical leave?**

Generally, yes. DOL clarifies that the law requires employers to provide the same (or a nearly equivalent) job to an employee who returns to work following a leave.

In most instances, an employee is entitled to be restored to the same or an equivalent position upon return from paid sick leave or expanded family and medical leave.

However, a returning employee is not protected from employment actions, such as layoffs, that would have affected him/her regardless of taking leave. This means the employer can lay off an employee for legitimate business reasons, such as the closure of your worksite.

An employer may also refuse to return someone to work in the same position if he/she is a highly compensated key employee as defined under the FMLA, or if the employer has fewer than 25 employees, and the employee took leave to care for a son or daughter whose school or place of care was closed, or whose child care provider was unavailable, and all four of the following hardship conditions exist:

- the position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the leave period;
- the employer made reasonable efforts to restore him/her to the same or an equivalent position;
- the employer makes reasonable efforts to contact the employee if an equivalent position becomes available; and
- the employer continues to make reasonable efforts to contact the employee for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after his/her leave began, whichever is earlier.

**What if a company rehires someone who was laid off prior to April 1, 2020 – are they eligible for leave?**

The CARES Act adds new language to the EFMLA to address leave entitlement under the provision for "rehired employees". This change means that for purposes of EFMLA, the qualification that an employee must be employed for at least 30 calendar days includes an employee that was laid off on or after March 1, 2020 and had worked for the employer for not less than 30 of the last 60 days prior to layoff. Rehired employees who meet these criteria are eligible for EFMLA without restarting the 30-day clock.

**Can we fire someone if they go on leave and take advantage of the FFCRA if within their first 90 days?**

There are two parts to this question. The first, the law is clear that once an employee goes on leave it would be unlawful for an employer to interfere, retaliate or terminate someone for exercising their right to take such leave. However, if there are independent grounds to lay them off, including economic conditions, reduction in force, performance, etc. that is not related to anything discriminatory or attributed to the relief law in and of itself, an employee can be terminated during his/her leave.

**If an employee has PSL already saved, do we give an additional 80 hours of PSL, or would we give hours to equate up to 80?**

The 80 hours of sick leave available under the act is not accrued or taken through other available leave that the employer offers. This is a separate leave from that provided by the employer.

Furthermore, the DOL has made clear that any leave taken under EPSL and/or EFMLA is in addition to any other forms of sick/personal leave the employee has earned under an increasing number of state and local paid leave laws and ordinances offering similar protections. Thus, FFCRA does not touch these other leave entitlements, which means the employee's actual leave entitlement could exceed leave allowed under EPSL and EFMLA.

**SHELTER IN PLACE**

**We are a dental office and have been ordered to stop seeing patients. Can our employees still utilize the childcare reason?**

No, the DOL says that if the employer is closed and the employees are not working, they are not eligible for paid leave under the FFCRA and should file for unemployment.

**Are our employees “essential employees”? We are an ob/gyn medical practice. We still need to see our pregnant patients and those who become pregnant. We also have patients who have medical issues who need to be seen. We are trying to do some telemedicine, but some patients cannot be seen that way. There are some who can work from home, but the overwhelming majority need to be on-site., Are all these employees considered “essential employees” who must come to work during the county’s “stay at home” rule?**

Medical personnel are covered under one of the 16 critical infrastructure sectors recognized by US Cybersecurity and Infrastructure Security Agency (CISA). The conservative approach is to assume yes, they are able to come to work and provide services. Some jurisdictions may have more defined guidelines within the confines of the medical industry. Check local ordinances and US DOL guidance for more information.

**Can we furlough employees who are not able to work from home but are not “essential employees”?**

If they are not eligible for leave under any of the 6 criteria and they can be put on unpaid leave, you should offer the leave.

**Does a county Stay at home directive count?**

If the business is allowed to remain open (i.e., is not located in an area subject to a shelter-in-place order), but the employee lives in another jurisdiction that has enforced a shelter-in-place directive, then the employee is covered under the extended leave act as it falls under covered reason #1 assuming the employee is not able to work from home

**The employer is closed due to a county Stay at Home order in effect until April 5. The employer has a few employees who care for children and their school is canceled until April 13. Does the 2-week sick leave benefit apply for the stay at home order?**

According to recently released Q&A from the DOL, the employee is not eligible for EFMLA. If the school is closed **and** the employer is closed, then the employees are ineligible for paid leave.



**Our county has issued a "Stay at Home" ordinance. The construction industry has been deemed an essential business. Would this apply to the technicians/installers performing the additional service AND the office employees who do not go to job sites?**

Essential workers will be allowed to travel to work but the rules on nonessential workers depends on how the local ordinance is worded. It is encouraged to allow all employees able to telework to do so.

## HEALTH AND SAFETY

**Our company is remaining open, if an employee doesn't feel comfortable coming to work out of concern of catching the virus (no one has been exposed within the company as of yet), can they take off vacation or time off without pay without fear of losing their job?**

The law is clear that you must maintain status quo for whatever benefits you already provide, including paid and unpaid leave. Unless it's considered a situation where the employee is in eminent danger, being uncomfortable coming to work is not a qualifying reason to receive the leave under the FFCRA. If employees want to use vacation or leave without pay, they can, but the DOL suggests this circumstance is not eligible for any form of emergency leave.

**If an employee asks to work from home and the employer doesn't let them, due to the virus and/or schools and daycares being closed, can the employee risk losing their job if they can't come to work?**

If there is no remote work available and the employee's job is otherwise available, but the employee doesn't want to come into work or cannot come in, that circumstance is such that they would probably be eligible for leave by asserting the day care rule. If the employee's specific situation is not covered under one of the 6 conditions, the employer can terminate the employee.

**If an employee displays symptoms but was not tested, is the company obligated to close the facility? What if someone does test positive?**

The CDC states that employees who exhibit symptoms of influenza-like illness at work during a pandemic should leave the workplace. The Equal Employment Opportunity Commission (EEOC) confirmed that advising workers to go home is permissible and not considered disability-related if the symptoms present are akin to the COVID-19 coronavirus or the flu.

Once confirmed that the employee tested positive for the COVID-19 virus, you should send home any employees who worked closely with the infected employee for a 14-day period of time to ensure the infection does not spread. Before the employee departs, ask them to identify all individuals who worked in close proximity (three to six feet) with them in the previous 14 days to ensure you have a full list of those who should be sent home. When sending other employees home, do not identify by name the infected employee or you could risk a violation of confidentiality laws, including HIPAA. If you work in a shared office building or area, you should inform building management so they can take whatever precautions they deem necessary.

The CDC also provides the following recommendations for most non-healthcare businesses that have suspected or confirmed COVID-19 cases:

It is recommended to close off areas used by the ill persons and wait as long as practical before beginning cleaning and disinfection to minimize potential for exposure to respiratory droplets. Open outside doors and windows to increase air circulation in the area. If possible, wait up to 24 hours before beginning cleaning and disinfection.

Cleaning staff should clean and disinfect all areas (e.g., offices, bathrooms, and common areas) used by the ill persons, focusing especially on frequently touched surfaces.

**If an employee lives in a county/city where there is a "shelter in place" but works for a company in a different locality where there is no shelter in place and the company is considered an essential business, what does the company do because the employee's duties are essential?**

The federal government has designated 16 industries that are considered critical to the infrastructure and if the person is in a job that is essential in supporting one of those industries, they will be allowed to report to work. If the employee states they do not want to come to work because they are fearful or don't want to be at risk, and there is no imminent danger to their health, this is not considered a qualifying event under the FFCRA and therefore the employee could be subject to disciplinary action.

Questco has developed a sample letter that employers can provide to their employees who are working for companies considered essential services. Clients are encouraged to provide this letter to your employees to carry with them in the event that they are pulled over or asked why they are out on the street. Should you have a need to provide a letter to your employees, please reach out to your service provider to provide a sample template; a copy of the template has also been posted to the Questco website.

**If an employee is experiencing symptoms and seeking medical diagnosis, how long do they have to get tested, and obtain the diagnosis/test results back? Would they receive emergency paid sick leave for this entire time?**

There is no specific guidance on a duration of time for receiving test results, as that is not in the employee's control and it is up to the testing facility to return the results. The employee is entitled to as much sick leave time as they would be entitled to for the period in which they are waiting for the test results, up to the maximum of 80 hours. If they find out in three days and find the test is negative, they will only get paid for those 3 days of sick leave. If it takes longer, they will get paid for the full duration up to the maximum amount of days allowed.

**If an employee is ordered to be quarantined by the government, do they only stay home for the length of the quarantine and then can they return to work, or could they continue to stay home (even after the required quarantine time frame) if they wished?**

Assuming it's not one of the 16 essential industries and they are not essential personnel, if their city or their county declares a lockdown for 2 weeks and it's April 1<sup>st</sup> and the law is now in effect, and they are supposed to be quarantined until April 10<sup>th</sup>, they should remain at home for the 10 days and if they cannot work remotely, they would be eligible for the leave because they were ordered by the government entity to be quarantined or stay at home. If they wish to stay at home after the quarantine, they are not eligible for the leave.

**Who deems if office employees are essential? Employer wants all employees to work.**

There are federal guidelines on this with 16 designated critical industries and the states are following the federal guidelines. It's very broad and complicated but local jurisdiction resources are readily available for you to make that determination.

## FURLOUGHS AND LAYOFFS

**For layoffs, closures and shutdowns are employees still able to claim FMLA and get paid for the next 10 weeks? Or would they be directed to seek unemployment instead?**

If the company shuts down completely prior to the effective date of the FFCRA and prior to the leave request, employees are ineligible for leave under the act. The employees should apply for unemployment.

**If we had intentions of hiring an individual 2 weeks ago, but now we can't, is that okay?**

Yes, you can rescind an offer under the circumstances.

**AFFORDABILITY AND THE FFCRA TAX CREDIT**

**If an employee goes on leave and the company goes bankrupt, is the employer still required to pay for this three-month period?**

Employers need to comply with the law but if you have to file bankruptcy, the leave pay would be considered a payment of wages and the obligation for payment would be handled through the bankruptcy proceedings. In the case of bankruptcy, wage claims are considered a priority claim.

**Answers to your questions around funding under the FFCRA:**

The intention of this leave act is that it will be funded by the government. Certain federal employment and personal income taxes that the employer would normally be responsible for or that the employee is responsible for will not have to be remitted. Employers will be able to retain those funds that they would otherwise pay to the IRS for payroll taxes to defer the cost of paid leave.

If you have a tax payment due for all of your employees, it can be reduced by the amount of wages you pay that qualify under the leave act. As your payroll provider, Questco will be able to set up and track that for you. This starts with the first pay period ending after April 1.

Questco is currently evaluating how to adjust the billing to account for the offset of taxes due against leave payment to help manage your cash flow as it relates to this Act. As your payroll provider, Questco will be responsible for developing a billing solution.

**Since Questco will get the payroll credits, do they bill the customer for time paid to employees less credits?**

Questco is currently evaluating how to adjust the billing to account for the offset of taxes due against leave payments incurred to help manage your cash flow as it relates to this Act. We do recognize that this is our responsibility as your payroll provider to come up with a billing solution.

**Is it 100% certain that we are all eligible to receive these payroll tax credits since our payroll taxes are paid by Questco and not by our individual business. Many emails that came out said that this was still an unknown.**

Any tax credits arising from paid leave benefits provided for under the FFCRA will be applied at the client level, based on the leave wages you pay and the credit will be based on the taxes owed by the client based on the specific company's payroll wages.

**BENEFITS**

**If an employee is terminated, are we required to pay the insurance premium?**

Insurance premiums are contracts and the employee would be covered through the end of the month in which they were terminated. The responsibility for paying for those benefits is the employers' responsibility. To the extent that the premiums cannot be collected from the employee, the employer will be responsible for the full amount.

Many clients that are not able to pay wages to employees due to there being no work to perform have elected to place employees in a leave status while the employer covers the full cost of medical benefits. This is at the discretion of the employer.

If you want to terminate the employee and not continue benefits, the employee will become eligible for COBRA. Questco will administer the notifications to the employees and provide assistance with the COBRA set-up.

**Do we have to keep them at 30 hours for them to maintain company paid/subsidized health insurance?**

Employers may reduce employee hours; however, this could result in a loss of insurance coverage, as every insurance plan has defined a certain number of hours per week to determine employee eligibility. This will be determined case by case under the minimum threshold required by the plan/carrier.

**If an employee elected to take paid sick leave and is currently in a waiting period for coverage under the employer's health plan, will health coverage still take effect after the waiting period is completed (i.e., would eligibility for coverage take place on the same day as it would otherwise take effect?)**

Yes. If an employee is on an employer-provided group health coverage, the employee is entitled to group health coverage during the paid sick leave period on the same terms as if the employee continued to work. Therefore, the requirements for eligibility, including any requirement to complete a waiting period, would apply in the same way as if the employee continued to work, including that the days they are on paid sick leave count towards completion of the waiting period. If, under the terms of the plan, an individual can elect coverage that becomes effective after completing the waiting period, the health coverage must take effect once the waiting period is complete.

**UNEMPLOYMENT**

Questco will continue to provide the same level of support we have always provided for unemployment filings and claims. We are able to track leaves of absence, terminations, and extended furloughs as we have done in the past but due an increase in processing volume, would appreciate your patience if there are delays in our responses to any questions or requests.

**If an employee is terminated, how would unemployment work? Would our rates go up, even if time in crisis?**

Many states are establishing temporary regulations stating that if you need to file for unemployment, COVID-19 related terminations will be forgiven with respect to future increases in unemployment tax rates. This is on a state by state basis and more information will be released in the future. Furthermore, the funding provided for under the CARES Act is intended to reduce the financial burden placed on the individual states.

**If a salaried employee is taken down to hourly and only 3 days a week, can they apply for unemployment to help compensate their pay?**

Converting salaried exempt employees to hourly can have a number of ramifications. If the change in status results in a reduction of hours, partial unemployment may be available; however, each state is handling this issue separately.

Internal Revenue Service  
<https://www.irs.gov/coronavirus>

Questco Resource Page  
<https://info.questco.net/covid-19-resource-page>

Fisher Broyles  
<https://www.fisherbroyles.com/gordon-m-berger/>