

The Families First Coronavirus Response Act (the “**FFCRA**”) will apply during the period beginning on April 1, 2020, and ending on December 31, 2020. Two separate sections of the **FFCRA** address paid COVID-19 leave: (1) the **Emergency Paid Leave Act**; and (2) the **Expanded Family and Medical Leave Act (“FMLA”) provisions**. These sections are coordinated. For the first two weeks of leave (up to 80 hours), the **Emergency Paid Leave Act** requires certain employers to provide paid leave to employees unable to work due to COVID-19. Thereafter, for up to an additional 10 weeks, the **Expanded FMLA provisions** require certain employers to provide paid leave to qualifying employees unable to work due to COVID-19-related child care obligations.

The **Emergency Paid Leave Act** and **Expanded FMLA provisions** also require certain employers to continue making health plan contributions on behalf of qualifying employees during leave. Note that these obligations are in addition to preexisting **FMLA** obligations. As illustrated below, the particular circumstances in which an employer must continue to make health plan contributions will depend on whether or not leave is due to COVID-19.

An employer is entitled to receive a fully refundable tax credit equal to the wages it is required to pay under the **FFCRA**, including the employer’s share of Medicare tax imposed on those wages and its cost of maintaining health insurance coverage for the employee during the leave period.

Paid leave and continued contributions under the Emergency Paid Leave Act			
If the employer . . .	And the employee . . .	And the employee takes leave due to . . .	Then . . .
Has fewer than 500 employees	IS NOT employed by the employer on the date the employee takes leave	[Not applicable]	<ul style="list-style-type: none"> The employer IS NOT obligated to provide paid sick leave. The employer IS NOT obligated to continue to make health plan contributions on behalf of the employee.
	IS employed by the employer on the date the employee takes leave	<ol style="list-style-type: none"> A quarantine or isolation order related to COVID-19; Being advised by a health care provider to self-quarantine due to COVID-19; or Experiencing COVID-19 symptoms and seeking a medical diagnosis 	<ul style="list-style-type: none"> The employer IS obligated to provide paid sick leave at the employee’s regular rate of pay, up to \$511 per day, for up to 80 hours (up to \$5,110 in the aggregate).* The employer IS obligated to continue to make health plan contributions on behalf of the employee for up to two weeks.**
	IS employed by the employer on the date the employee takes leave	<ol style="list-style-type: none"> Having to care for an individual who is: <ol style="list-style-type: none"> Subject to a quarantine or isolation order related to COVID-19; or Advised by a health care provider to self-quarantine due to COVID-19; Having to care for a son/daughter under age 18 whose school or place of care is closed for reasons related to COVID-19***; or Experiencing any other substantially-similar condition specified by federal agencies 	<ul style="list-style-type: none"> The employer IS obligated to provide paid sick leave at 2/3 of the employee’s regular rate of pay, up to \$200 per day, for up to 80 hours (up to \$2,000 in the aggregate).* The employer IS obligated to continue to make health plan contributions on behalf of the employee for up to two weeks.**

* A part-time employee is entitled to leave for his/her average number of work hours in a two-week period. If the employee’s schedule varies, a six-month average may be used to calculate the average daily hours. The Emergency Family and Medical Leave Expansion Act requires an employer to pay an employee for hours the employee would have been normally scheduled to work, even if that is more than 40 hours in a week. However, paid sick leave is limited to 80 hours over a two week period (e.g., an employee scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week). Additionally, the daily and aggregate caps placed on pay for paid sick leave continue to apply. Sick pay does not need to include a premium for overtime hours.

** It is unclear whether the FFCRA obligates employers to make contributions on an employee’s behalf to other fringe benefit funds (e.g., pension funds). In the absence of further guidance, flat-dollar (e.g., \$3.00 per hour) contributions are generally not owed to other (i.e., non-health) IBEW 22/NECA fringe benefit funds due to the language in the CBAs, which indicates that contributions are only owed for hours worked. In contrast, contributions based on gross wages (e.g., 3% of wages) are owed to other fringe benefit funds since the FFCRA treats paid sick leave as wages.

*** A small business with fewer than 50 employees may be exempt from having to provide paid leave due to school or place of care closures for COVID-19 related reasons if providing paid leave would jeopardize the viability of the business.

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Paid leave and continued contributions under the FMLA due to COVID-19			
If the employer . . .	And the employee . . .	And the employee takes leave due to . . .	Then . . .
Has fewer than 500 employees	HAS NOT BEEN employed by the employer for at least 30 calendar days	[Not applicable]	<ul style="list-style-type: none"> The employer IS NOT obligated to provide paid leave. The employer IS NOT obligated to continue to make health plan contributions on behalf of the employee.
	HAS BEEN employed by the employer for at least 30 calendar days	Having to care for a son/daughter under age 18 whose school or place of care is closed for reasons related to COVID-19*	<ul style="list-style-type: none"> Starting two weeks after leave commences, the employer IS obligated to provide paid leave at 2/3 of the employee's regular rate of pay, up to \$200 per day, for up to 10 weeks (up to \$10,000 in the aggregate).** The employer IS obligated to continue to make health plan contributions on behalf of the employee for up to twelve weeks.***
	HAS BEEN employed by the employer for at least 30 calendar days	A reason OTHER THAN having to care for a son/daughter under age 18 whose school or place of care is closed for reasons related to COVID-19	<ul style="list-style-type: none"> The employer IS NOT obligated to provide paid leave. The employer IS NOT obligated to continue to make health plan contributions on behalf of the employee UNLESS the FMLA otherwise applies.
<p>* A small business with fewer than 50 employees may be exempt from having to provide paid leave due to school or place of care closures for COVID-19 related reasons if providing paid leave would jeopardize the viability of the business.</p> <p>** The employee's regular rate of pay is determined by how many hours the employee would otherwise be normally scheduled to work. If the employee's schedule varies, a six-month average may be used to calculate the average daily hours.</p> <p>*** It is unclear whether the FFCRA obligates employers to make contributions on an employee's behalf to other fringe benefit funds (e.g., pension funds). In the absence of further guidance, flat-dollar (e.g., \$3.00 per hour) contributions are generally not owed to other (i.e., non-health) IBEW 22/NECA fringe benefit funds due to the language in the CBAs, which indicates that contributions are only owed for hours worked. In contrast, contributions based on gross wages (e.g., 3% of wages) are owed to other fringe benefit funds since the FFCRA treats paid family leave as wages.</p>			

Continued contributions under the FMLA			
If the employer . . .	And the employee . . .	And the employee takes leave due to . . .	Then . . .
Has less than 50 employees employed within 75 miles of the worksite	[Not applicable]	<ol style="list-style-type: none"> Having a serious medical condition that IS NOT COVID-19-related; or Having to care for a spouse, parent, son, or daughter because the spouse, parent, son, or daughter has a serious medical condition that IS NOT COVID-19-related 	The employer IS NOT obligated to continue to make health plan contributions on behalf of the employee.
Has at least 50 employees employed within 75 miles of the worksite	HAS NOT BEEN employed by the employer for at least 12 months and for at least 1,250 hours during the previous 12-month period	[Not applicable]	The employer IS NOT obligated to continue to make health plan contributions on behalf of the employee.
	HAS BEEN employed by the employer for at least 12 months and for at least 1,250 hours during the previous 12-month period	<ol style="list-style-type: none"> Having a serious medical condition* that makes the employee unable to perform the functions of the position of the employee; or Having to care for a spouse, parent, son, or daughter because the spouse, parent, son, or daughter has a serious medical condition* 	The employer IS obligated to continue to make health plan contributions on behalf of the employee for up to twelve weeks.
* The medical condition can be, but is not required to be, COVID-19-related.			

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