

# US: Congress pursues mitigating impact of COVID-19 with Families First Coronavirus Response Act

March 2020 | **Sam Ramer**

**In a sobering show of bipartisan action, US Congress passed and President Trump signed the Families First Coronavirus Response Act (HR 6201) (FFCRA) into law. Congress passed the bill by overwhelming majorities – the House in a vote of 363-40 (with one Present vote), and the Senate, 90-8. FFCRA’s relief package contains a variety of measures designed to protect Americans’ personal safety and financial security from the effects of the coronavirus.**

FFCRA represents the second piece of the federal government’s broader legislative response to the devastating coronavirus. President Trump signed the first bill, the Coronavirus Preparedness and Response Supplemental Appropriations Act, into law on March 6, 2020. Additionally, the administration, led by Treasury Secretary Steven Mnuchin, is currently working with Capitol Hill on drafting a third piece of legislation.

The below discussion provides summary information on FFCRA.

## **FFCRA summary**

Of interest to most employers, FFCRA contains two temporary paid leave provisions, requiring employers to support employees during family and medical leave, as well as sick leave. Notably, the definition of a covered employee is one who is subject to a quarantine or isolation order; as such orders proliferate, the strain on employers will increase. However, the Act also assists employers in covering the costs related to these paid leave requirements through tax credit provisions.

Relatedly, FFCRA supports states in addressing the coronavirus’ economic fallout through increased funding and flexibility for unemployment insurance.

In addition to its financial safeguards, FFCRA includes measures

to protect public health. Most notably, the legislation provides for free coronavirus testing. It also makes waivers to school lunch and adult care food program requirements available to states, allowing food to be served when schools are shut down and affording flexibility in nutritional requirements, among other measures.

Lastly, FFCRA includes a robust appropriations package, allocating funds to numerous federal government agencies to bolster existing federal programs, administer coronavirus-related health services, and otherwise carry out the legislation.

In total, FFCRA contains eight main provisions (which the bill refers to as “Divisions”). Each are discussed in detail below, with the exception of Division H, which is a discussion of the bill’s budgetary effects.

## **Employee Paid Family and Medical Leave and Associated Employer Tax Credit (FFCRA Divisions C and G)**

FFCRA amends the Family and Medical Leave Act (FMLA) to include leave needed to care for an employee’s minor child whose school or care provider is unavailable due to a publically-declared coronavirus public health emergency.

Covered employees. The paid family and medical leave may only be used by employees who have been employed by their current employer for at least 30 calendar days and who work for a covered employer (discussed below). FFCRA's family leave is available for employees who are unable to work (or telework) due to the need to care for a son or daughter under the age of 18, if that child's school or place of care has been closed or if child care is unavailable due to a publically-declared coronavirus public health emergency.

Note that the law allows for employers and/or the Secretary of Labor to exclude certain healthcare workers and emergency responders from the leave provisions.

Covered employers. With respect to the private sector, the paid family leave requirements apply to employers with fewer than 500 employees. FFCRA, however, allows the Secretary of Labor to exempt employers with fewer than 50 employees from the paid leave requirements if they "would jeopardize the viability of the business as a going concern." The paid family leave requirements also apply to certain public agencies, including state and local governments, and some federal government employers.

The paid family and medical benefit. Employers are not required to pay employees for the first 10 days of family and medical leave, though employees may elect to use previously-accrued paid leave during this period (e.g. vacation, personal, or medical leave). Following the 10-day period, employers must begin providing paid leave. Specifically, employers must pay the employee at least two-thirds of the employee's pay rate. An employee's paid leave cannot exceed US\$200 per day and US\$10,000 in the aggregate.

Employer tax credit. Employers can claim a tax credit for 100 percent of the amount required to be paid in family leave, subject to the US\$200 per day cap discussed above. Additionally, the tax credit amount can be increased by the amount employers pay for an employee's healthcare plan while they are on leave.

Self-employed individuals are also eligible for the tax credit if they are unable to work pursuant to the requirements discussed above. Though self-employed individuals may qualify for an income tax credit equal to 100 percent of average daily self-employment income, the credits are also limited to the US\$200 per day cap, and is subject to a maximum of 50 days.

Effective dates. The paid family leave provision takes effect no later than 15 days after the bill's enactment and expires on December 31, 2020.

## Employee Paid Sick Leave and Associated Employer Tax Credit (FFCRA Divisions E and G)

FFCRA requires employers to provide paid sick time to employees who are unable to work (or telework) due to coronavirus-related medical and caregiving needs.

Covered employees. Covered employers (discussed below) must provide paid sick leave to employees who are unable to work (or telework) because the employee:

1. Is subject to a Federal, State, or local quarantine or isolation order related to coronavirus.
2. Has been advised by a healthcare provider to self-quarantine due to concerns related to coronavirus.
3. Is experiencing symptoms of coronavirus and seeking a medical diagnosis.
4. Is caring for an individual who is subject to a quarantine or isolation order or has been advised by a healthcare provider to self-quarantine.
5. Is caring for a son or daughter if the child's school or place of care has been closed, or the child care provider is unavailable, due to coronavirus precautions.
6. Any other "substantially similar condition" to be specified in the future by the Secretary of Health and Human Services.

Unlike its family leave provision, FFCRA's sick leave is available to all employees regardless of how long he/she has been employed by their current employer.

Note that the law allows for employers and/or the Secretary of Labor to exclude certain healthcare workers and emergency responders from the leave provisions.

Covered employers. The paid sick leave requirements apply to private employers with fewer than 500 employees, and to most public-sector employers. Additionally, the Secretary of Labor may exempt employers with fewer than 50 employees from the paid sick requirements if they "would jeopardize the viability of the business as a going concern."

The paid sick leave benefit. Employers must provide up to 80 hours (10 workdays) of paid sick leave to their full-time employees. For part-time employees, the number of hours is prorated by the average number of hours worked in a two-week period.

The maximum amount that must be paid in sick leave depends on the purpose for which the employee is taking the leave. Sick leave wages cannot exceed US\$511 per day and US\$5,110 in the aggregate for employees taking leave for reasons (1), (2), and (3), as listed above; and cannot exceed US\$200 per day and US\$2,000 in the aggregate for employees taking leave for reasons (4), (5), and (6), as listed above. Employees cannot carry over this sick time into the next year.

Employers are prohibited from forcing employees from using other accumulated paid leave before availing themselves to this benefit, as well as from requiring employees to search for or find a replacement employee to cover the hours during which the employee is using this paid sick time.

Employer tax credit. Employers can claim a tax credit for 100 percent of the amount required to be paid in sick leave wages, subject to the caps discussed above (i.e. a maximum of US\$200-\$511 per day for a maximum of 10 workdays).

Self-employed individuals are also eligible for the tax credit if they are unable to work for the reasons listed above. Though self-employed individuals may qualify for an income tax credit equal to 100 percent of average daily self-employment income, the credits are also limited to the US\$200-\$511 per day cap for a maximum of 10 workdays.

Effective dates. The paid sick leave provision takes effect no later than 15 days after the bill's enactment and expires on December 31, 2020.

## Emergency unemployment insurance (FFCRA Division D)

Emergency state grants and increased funding for Extended Benefits. FFCRA provides US\$1 billion in emergency grants for calendar year 2020 to states for activities related to processing and paying unemployment insurance benefits. Half of these funds are allocated for administrative costs, and the other half are reserved for emergency grants to states that experience at least a 10 percent increase in unemployment (over the previous year). For those states with at least a 10 percent increase in unemployment, the law also provides 100 percent federal funding for Extended Benefits, which normally require 50 percent of funding to come from states.

Interest-free loans. The legislation makes interest-free loans available to states to help pay regular unemployment insurance benefits through December 31, 2020, if needed.

Work sharing programs. FFCRA directs the Department of Labor to provide technical assistance to states that want to establish work-sharing programs, in which employers reduce hours instead of laying employees off.

## Coronavirus testing and related health provisions (FFCRA Division F)

Coverage for coronavirus testing. FFCRA requires private health plans to provide coverage for coronavirus diagnostic testing, as well as for the costs of provider, urgent care center, and emergency room visits in order to receive testing. This coverage must be provided at no cost to the consumer.

Additionally, the law extends the same no-cost coverage requirements to Medicare Part B (which already covers the diagnostic test itself), Medicare Advantage, Medicaid and CHIP, TRICARE, and contract health services serving American Indians. It also provides states with the option to extend Medicaid eligibility to uninsured populations for the purposes of coronavirus testing.

Liability protections. FFCRA subjects approved personal respiratory protective devices to the Public Readiness and Emergency Preparedness Act (PREP), which provides immunity from liability (except for willful misconduct) for claims related to the use of the countermeasure. This provision sunsets October 1, 2024.

Emergency FMAP Increase. The legislation increases the states' federal medical assistance percentage (FMAP) by 6.2 percentage points for the duration of the coronavirus public health emergency. It requires states to maintain eligibility standards that are no less restrictive than the date of enactment.

## Nutrition waivers (FFCRA Division B)

School lunch and adult care food program waivers. FFCRA allows for states to obtain waivers to the school lunch and adult care food program requirements. These waivers will allow states to provide meals and meal supplements during school closures caused by coronavirus. The waivers also give states flexibility with respect to the nutritional content of meals, should the coronavirus disrupt applicable supply chains, as well as permit non-congregate feeding, which allows serving food in individual settings. FFCRA's waiver provisions sunset on September 30, 2020.

SNAP waivers. FFCRA provides flexibility to states to lessen the eligibility requirements for low-income jobless workers to obtain

benefits under the supplemental nutrition assistance program (SNAP). It further provides for emergency allotments to address temporary food needs to households participating in SNAP.

## Appropriations (FFCRA Division A)

FFCRA appropriates funding for the fiscal year ending September 30, 2020, to numerous federal government agencies to respond to the coronavirus.

Food and nutrition. FFCRA provides an additional US\$500 million for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and \$400 million for the Commodity Assistance Program. It also makes funding available to states in order to provide free or reduced price school meals for households containing at least one eligible child who is attending a school that is shut down for at least five days due to a coronavirus-related public health emergency designation.

Other provisions. FFCRA includes the following funding allocations:

- Department of Defense – US\$82 million to administer coronavirus-related health services.

- Internal Revenue Service – US\$15 million to carry out FFCRA.
- Department of Health and Human Services – US\$64 million to the Indian Health Service; US\$250 million for aging and disability services programs and US\$1 billion for public health and social services emergency funds, in order to reimburse providers for certain coronavirus-related health services.
- Department of Veterans Affairs – US\$30 million for medical services to administer coronavirus-related health services, and US\$30 million for medical community care to administer coronavirus-related health services.

## Conclusion:

The FFCRA addresses the immediate needs of those who will be sidelined due to the virus and the public health shutdowns it has caused. It opens the spigots of federal dollars to the agencies to help gird them for the fallout to come. However, it does not address the economic havoc that American businesses are experiencing. That heavy lift will be the focus of the third round of legislation, being debated now at the White House and in the Capitol. Stay tuned.



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