



## **Families First Coronavirus Recovery Act: Legal Obligations for Farms with Employees during COVID-19**

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The Families First Coronavirus Recovery Act (FFCRA) temporarily requires some employers to provide employees up to 80 hours of paid sick leave and expands family and medical leave under FMLA for COVID-19. The goal is to make it financially possible for employees to stay at home if needed and so reduce the spread of the coronavirus. To help make this paid leave feasible for small and mid-sized businesses, the federal government will provide dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA.

The US Department of Labor has published a Fact Sheet explaining what make employees eligible for leave, the amount of paid sick leave to be provided, and qualified reasons for claiming the leave (<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>). These reasons include being ill with COVID-19 or under self-quarantine requirements or caring for family members who are. FFCRA also requires leave for employees who must care for children whose school or place of care is closed due to COVID-19. Tax credits are available for employers to pay the cost of FFCRA leave. Exemptions for small businesses are also available. FFCRA became law on March 18 and went into effect April 1. Employers have until April 17 to get into compliance (<https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1>). This temporary rule remains in effect until December 31, 2020.

This document provides guidance to farms with employees to help them understand this new law so that they can get into compliance. Note, as a disclaimer, I am not a lawyer. Farmers should seek formal legal advice from their lawyers as needed.

### **FFCRA Applies to Farms with Employees**

FFCRA applies to all businesses (including farms) with fewer than 500 employees. This means farms with employees can use the tax credit to pay for FFCRA leave for their employees. Farms and other business qualify as small business if they have fewer than 50 employees, in which case they can file for exemptions if they wish. Employees, both full-time and part-time, are those you pay payroll taxes for (i.e., withhold social security and send W2s to them). It does not include those you provide 1099s forms to. Contact your tax preparer or farm accountant if you have questions, or call the Department of Labor Wage and Hour Division's FFCRA number: 1-866-487-9243.

### **Tax Credits to Pay FFCRA Leave**

The federal government will pay the cost for employers to provide FFCRA leave to employees, either by payroll tax credits or direct payments to employers. The federal government issued a news release describing these credits and payments (<https://www.dol.gov/newsroom/releases/osec/osec20200320>). Under the section "Prompt Payment for the Cost of Providing Leave", the news release says that

employers will be able to retain the direct cost of paying employee FFCRA leave from the quarterly payroll tax returns they file with the IRS. If there are insufficient payroll taxes to cover the full cost of the leave, employers will be able to file a request for advanced payment of tax credits from the IRS, with the IRS expecting to process these requests in two weeks or less.

The IRS issued more detailed guidance on retaining payroll taxes and requesting advanced payments: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>. See the Basic FAQs on this news release. Basic FAQ #2 says credits can be claimed on your quarterly tax return (Form 941), or by reducing your federal employment tax deposits. If federal employment taxes are not enough to cover the cost of paid leave, employers can submit a new IRS form (Form 7200) to receive advanced payment of tax credits. Basic FAQ #4 notes that records and documentation must be retained to claim the credit. Basic FAQs #44, #45 and #46 provide a detailed explanation of what types of records to retain. For questions, contact your tax preparer or farm accountant.

### **FFCRA Tax Credits excluded from PPP Loans**

Farmers can apply for forgivable loans under the new Paycheck Protection Program (PPP) to cover up to two months of payroll costs and/or self-employment income during the COVID-19 crisis (<https://farms.extension.wisc.edu/ppp-and-farmers/>). Employers, including farmers, cannot claim the payroll tax credit for providing sick leave under the FFCRA and then also apply to cover that paid sick leave through the PPP. They will need to exclude payroll for which they received a FFCRA tax credit from their request for PPP loan forgiveness (<https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>). For questions, contact your tax preparer and lender.

### **Filing for Exemptions**

The US Department of Labor has provided guidance to employers and employees on FFCRA through 93 Frequently Asked Questions (FAQ): <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>. FAQ #4 explains that if providing COVID-19 paid sick leave benefits would jeopardize the viability of your small business, employers can file for a small business exemption. These exemptions will be evaluated on case-by-case basis by the Department of Labor's Wage and Hour division and the Department of Labor will soon issue guidance on the criteria that will be used to evaluate these exemption requests. Note that this exemption will only be from paying leave for employees requesting leave due to school or child care closure (<https://www.natlawreview.com/article/dol-clarifies-families-first-coronavirus-response-act-small-business-exemption>).

Responses to FAQ #58 and #59 provide some guidance. Businesses with fewer than 50 employees do not need to provide paid FFCRA leave if the employee requests leave because their child's school or place of care is closed, or a child care provider is unavailable, due to COVID-19 (FAQ #59). Such businesses are also exempt if providing the leave results in financial hardship or risk for the business or replacement workers are unavailable (FAQ #58).

Clearer criteria for what constitutes financial hardship or risk and the availability of alternate workers is not yet available, nor are the forms available for filing for an exemption. As we wait for additional clarification from federal agencies, farms who want to file for an exemption should seek advice from their farm lawyer. Note that filing an exemption is only necessary if a farmer has employees who

request paid FFCRA and the farm does not want to use the tax credit or direct payment options to pay the cost of these benefits. If you have questions, call the Department of Labor Wage and Hour Division's FFCRA number: 1-866-487-9243.

Department of Labor FFCRA Poster:

[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf).