

Families First Coronavirus Response Act (FFCRA)

LaMoure County

March 31st, 2020

The FFCRA's paid leave provisions are effective on April 1, 2020 and apply to leave taken between April 1, 2020 and December 31, 2020. The Act is not retroactive and does not apply to leave already taken due to school or daycare closures. The County is reimbursed from the federal government for leave taken under these provisions.

If you have questions or feel you meet one of the qualifying reasons listed below to receive paid leave please contact the Human Resources Advisor Tanya Wieler at 701-640-4447 or tanya@dakotadynamics.com.

Emergency Paid Sick Leave Act

Qualifying Reasons

Under the Emergency Paid Sick Leave provisions, employees will be eligible for additional paid leave if the employee is unable to work or telework because the employee is one or more of the following:

1. Subject to a federal, state or local quarantine or isolation order related to COVID-19.
2. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. Experiencing symptoms of COVID-19 **and** is seeking a medical diagnosis.
4. Caring for an individual who is subject to a quarantine order or who has been advised by a health care provider to self-quarantine due to COVID-19.
5. Caring for a son or daughter whose school or place of care has been closed, or the child care provider is unavailable due to COVID-19 related reasons.
6. Experiencing any other substantially similar conditions specified by the Secretary of Health and Human Services.

Resolution that goes with the FFCRA:

Whereas, the Families First Coronavirus Response Act and Emergency Family and Medical Leave Expansion Act ("Act") was enacted April 1, 2020 in response to the National Covid-19 crisis.

Whereas, the Act allows the employer to exempt certain emergency responders from specific paid leave under the Act.

Therefore, the LaMoure County Commission amends its employee policy to exempt the following emergency responders from paid leave under the newly enacted Act. Emergency responders shall include, law enforcement officers, correction institution personnel, public health personnel, nurses, emergency management personnel, 911 operators, public works personnel.

1. Specifically, the emergency responders are exempt from the following: 1, 5, 6
2. and qualify for the following benefits and paid leave for the following: 2, 3, 4

Entitlements

1. Employees are eligible for this leave immediately regardless of how long the employee has been employed.
2. For full-time employees, the amount of additional paid sick leave is 80 hours. For part-time employees, the amount of additional paid sick leave is the number of hours the employee is normally scheduled to work over that period.
3. Required compensation during the additional paid leave period is at the employee's regular rate of pay for reasons (1),(2), or (3) as outlined above, but is capped at \$511 per day and \$5,110 in the aggregate. Leave for reasons (4), (5), or (6) as outlined above is at 2/3 of the employee's regular rate of pay and is capped at \$200 per day and \$2,000 in the aggregate.
4. Wages paid for required additional sick leave are not subject to the 6.2% social security tax normally paid by employers on employees' wages. Importantly, an employer may not require an employee to utilize other paid leave benefits before using the additional paid leave provided by the Act.
5. Nothing in the Emergency Paid Sick Leave provisions diminishes existing rights or benefits, so employees whose pay would be capped under the Act can be proportionately supplemented with existing leave available under court policy to meet the employee's regular salary.
6. Paid leave under the Emergency Paid Sick Leave Act cannot be carried over year to year and ends with the employee's next scheduled work shift following termination of the need for leave qualifying under the Act.
7. Temporary employees receive leave in the amount the employee works on average over a two-week period. Employees with varying schedules making it impossible to determine with certainty how many hours would have been worked over the two week period are to receive the average daily number of hours worked over the prior six-month period, including leave of any type, or the number of hours reasonably expected at the time of hire if the employee with a varying schedule has not worked such a period.
8. The Family and Medical Leave Act (FMLA) may also apply to the Emergency Paid Sick Leave Act in relation to the employee's own illness or the illness of a qualifying family member.

Emergency Family and Medical Leave Expansion Act

Under the Emergency Family and Medical Leave Expansion Act provisions, employees will be eligible for twelve weeks of leave if they are unable to work **or telework** due to a need for leave to care for a son or daughter as a result of a school or child care provider closing due to a federal, state, or locally declared COVID-19 public health emergency. **Employees and supervisors are encouraged to first explore telework options; employees do not qualify unless it is proven they are unable to telework or can only telework reduced hours from their normal schedule.** This

expanded basis for family medical leave, however, differs from other forms of family medical leave in a number of respects. Some key differences are as follows:

1. Employees are eligible for this leave if they have worked for the employer for 30 or more calendar days.
2. Leave is required to be paid after the first ten days at a rate of 2/3 of the employee's regular rate of pay but is capped at \$200 per day or \$10,000 in the aggregate.
3. Required wages under the Act would not be subject to the 6.2% social security tax normally paid by employers on employees' wages.
4. An employee whose pay would be capped can be proportionately supplemented with existing applicable leave to meet the employee's regular salary.
5. Although the first 10 days of leave may consist of unpaid leave, in most cases, the additional paid leave available under the Emergency Paid Sick Leave Act will apply to this otherwise unpaid period.
6. If paid leave under the Emergency Paid Sick Leave Act is not available, an employee may elect to substitute annual or other applicable paid leave, pursuant to the FMLA paid leave substitution provisions for a serious health condition under which the substitution of sick leave benefits may be limited to situations for which sick leave benefits would normally apply.

Frequently Asked Questions

Emergency Paid Sick Leave

- 1. Does Emergency Paid Sick Leave count against an employee's existing sick or annual leave balances?**

No

- 2. Can Emergency Paid Sick Leave be used on an intermittent schedule?**

Only if an employee is using the leave for qualifying reason #5 above (to care for a child whose school or place of care is closed.) Employees can use the 80 hours intermittently or as a reduced schedule. For example, if an employee has young children and has only been able to work 30 hours per week instead of 40 hours per week while they've been teleworking, they would be able to access 10 hours of leave each week.

- 3. Can an employee take the 80 hours (or prorated number of hours for part-time and temporary employees) of sick leave for the employee's self-quarantine and then another amount of paid emergency sick leave for another reason provided under the Emergency Paid Sick Leave Act?**

No. A full-time employee may take only up to two weeks—ten work days (80 hours)—of emergency paid sick leave for any combination of continuous qualifying reasons. A part-time employee may take emergency paid sick leave hours only up to the employee's

amount of work hours over an average two-week period for any combination of continuous qualifying reasons.

Emergency FMLA

1. Is Emergency FMLA paid or unpaid leave?

- a. The first 10 (work) days of Emergency FMLA will be unpaid unless the employee chooses to use the Emergency Paid Sick Leave hours to cover the leave time or other applicable leave balances to cover the leave time.
- b. After the first 10 (work) days of Emergency FMLA, the remaining FMLA leave will be paid, not less than 2/3 of the employee's regular rate to a maximum of \$200 per day, for the number of hours the employee would otherwise be schedule to work if the employee is unable to work (or telework) because the employee needs to care for the employee's child when the school or place of care is closed, or the childcare provider is unavailable, due to a declared COVID-19 emergency. The employee has the option to use the employee's accumulated annual leave or compensatory time balances to cover the remaining 1/3 leave time or other amount necessary to ensure 100% pay if the employee hits the \$200 per day cap.

2. Does the 2/3 paid leave count against an employee's sick, annual or compensatory time leave balances?

No, however, if the employee wants to receive full pay while on Emergency FMLA, the employee may use the employee's accumulated annual leave or compensatory time balances to cover the remaining 1/3 of the leave time or other amount of leave necessary to ensure 100% pay if the employee hits the \$200 per day cap.

3. Can an employee use Emergency FMLA for his or her illness related to COVID-19?

No, this category of FMLA is only related to child care. An employee suffering from COVID-19 may use the "standard FMLA" leave, but the special 2/3 paid leave provision will not be applicable. The employee's accrued sick leave, annual leave, or compensatory time, or emergency paid sick leave may also be available.

4. Are temporary workers eligible for this leave?

Yes

5. Can this leave be used on an intermittent schedule?

Yes

6. If an employee has already used FMLA hours, are the available Emergency FMLA hours reduced?

Yes, the 12 weeks will be reduced by the hours the employee has used for other FMLA qualifying events.