

FAMILY FIRST ACT DECISION TABLE
H.R 6201 Family First Coronavirus Response Act



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	Employer and Employee Eligibility and Related Issues	Citation
A	Family First Coronavirus Response Act (FFCRA) H.R. 6201 signed March 19, 2020, according to US DOL Wage & Hours Div. is effective April 1, 2020 through Dec. 31, 2020 . Among other things, it modifies the Family Medical Leave Act of 1993 (FMLA) to increase the number of covered employers and eligible employees, and to provide paid leave.	HR 6201, Sec. 3102, (a)(1); See Guidance from the US Dept of Labor Wage and Hour Division
B	"employer" means a person or company engaged in or effecting commerce employing fewer than 500 employees, but the Secretary of Labor can exempt small employers with less than 50 employees when compliance with the FFCRA would jeopardize the viability of the business as a going concern.	29 USCA 2611(4)(A)(i); HR 6201 Sec. 3102(b); HR 6201 Sec. 3102, 110(a)(1)(B)
C	"eligible employee" means an employee who has been employed for at least 30 calendar days by the employer (but see, HR 6201, Sec. 5102[e] that says FFCRA Emergency Paid Sick Leave shall be available for immediate use by the employee regardless of how long the employee has been employed by an employer).	29 USCA 2611(2)(A) and (B); HR 6201 Sec. 3102, Sec. 110(a)(1)(A)
D	"qualifying need related to a public health emergency" with respect to leave, means the employee is unable to work (or telework) due to the need to care for the employee's under 18 year old son or daughter if the school or child care provider is unavailable due to a public health emergency.	HR 6201, Sec. 3102, Sec. 110(a)(2)(A)
E	"public health emergency" means an emergency with respect to COVID-19 declared by a Federal, State, or local authority.	HR 6201, Sec. 3102, Sec. 110(a)(2)(B)
F	Employers are eligible for quarterly tax credit equal to 100% of qualified sick leave wages paid under the FFCRA, plus employer's qualified health plan expenses allocable to the qualified sick leave wages, plus qualified family leave wages paid . Sick leave wages and family leave wages paid are not subject to employer payroll taxes. * <i>Guidance from the U.S. Treasury Dept, IRS, and the U.S. Dept of Labor note that "health insurance costs" are included in the tax credit but there is no specific language on tax treatment or continuation of healthcare coverage for employees on leave in HR 6102.</i> Sick leave and family leave wages paid exceeding quarterly taxes owed shall be treated as an overpayment that shall be refunded to employer.	HR 6201 Sec. 7001(a); (d)(1); (d)(2); and Sec. 7003(a); and 7005(a); and Sec. 7001(b)(4); and Sec. 7003(b)(3) See; guidance online from US Treas. Dept, Internal Revenue Service, US Dept of Labor
G	FMLA prohibits interference or retaliation by employer against employee claiming FMLA benefits (termination, adverse action, etc). Some courts have recognized personal liability for retaliation if the individual defendant is an "employer" within the definition of the FMLA statute.	29 USCA 2615; 29 USCA 2611(4)(A)(i); 403 F.Supp.3d 133, 153 (2019) [USDC ED NY]; et al
H	Americans with Disabilities Act (ADA) prohibits interference or retaliation by employer against employee claiming ADA protections (termination, adverse action, etc). Some courts have recognized personal liability for retaliation if the individual defendant is an "employer" within the definition of the ADA statute.	42 USCA 12203; 957 F.Supp.196 (1997) [USDC ED CA]; et al

	DOES EMPLOYEE HAVE WORK TO DO?	STATUS OF EMPLOYEE	Employee Scenario During Coronavirus Event	Regular Payroll	Company Earned Sick Leave, PTO, or Company Unpaid Leave Plan	Family First Act Public Health Emergency Leave HR 6201 Sec. 110	Family First Act Emergency Paid Sick Leave HR 6201 Sec. 5101	Continuation of Employer Paid Portion of Healthcare Premiums under FMLA 29 USCA 2614(a)(2)	Unemployment Compensation	Citation	
1	NO	NOT SICK	Employee has no work to perform (no customers to serve, employer voluntarily closed, employer was ordered to close)	NO	YES	NO	NO	NO - But healthcare continuation under COBRA may apply at employee expense	YES	29 USCA 1161(b); 29 USCA 1162; 29 USCA 1163(2); [federal COBRA applies to employers with 20 or more employees; But see state COBRA laws that may apply to smaller employers]	18 Weeks COBRA
2	PARTIAL	NOT SICK	Employee has less hours available due to business slow down or lack of demand	YES (for hours worked)	YES	NO	NO	NO - But healthcare continuation under COBRA may apply at employee expense	YES (partial unemployment)	29 USCA 1161(b); 29 USCA 1162; 29 USCA 1163(2); [federal COBRA applies to employers with 20 or more employees; But see state COBRA laws that may apply to smaller employers]	
3	YES	NOT SICK	Employee has work to perform at work site or can work from home	YES	YES	NO	NO	Paid as usual <u>not</u> under FFCRA or COBRA	NO	Employee continues to receive work and pay and benefits at the normal rate	Normal Policies
4	YES	NOT SICK BUT EMPLOYEE REFUSES TO WORK	Employee has work to perform at a work site or at home but refuses to work for reasons not described in this document	NO	YES	NO	NO	Use existing objective, consistent, non-discriminatory leave policies	NO	Employee can work if they choose to. Be sure to address worker safety concerns under OSHA and applicable whistleblower laws	
5	YES	NOT SICK BUT IS CARING FOR A STUDENT	Employee unable to work (first 10 work days) because of school or daycare closed for a public health emergency and is caring for son/daughter under 18	NO	YES	NO	YES (2/3 regular rate up to \$200/day up to 80 hours)	YES benefits normally paid by employer continue	NO	HR 6102, Sec. 3102(a)(1); 29 USCA 2612; 29 USCA 2614(a)(2) and HR 6201, Sec. 3102, 110(b)(1)(A); Sec. 5102(a)(5); Sec. 5110(5)(B)(ii)	12 Weeks Paid
			Employee continues to be unable to work (after first 10 work days) because of school or daycare closed for a public health reason and is caring for son/daughter under 18	NO	YES	YES (After 10 days at 2/3 regular rate up to \$200/day capped at \$10,000)	NO	YES benefits normally paid by employer continue	NO	HR 6102, Sec. 3102(a)(1); 29 USCA 2612; 29 USCA 2614(a)(2) and HR 6201, Sec. 3102, Sec. 110(b)(2)(A) and (B) and (C)	
6	YES	NOT SICK BUT IS CARING FOR A SICK INDIVIDUAL	Employee is caring for an individual who is required to quarantine or isolate due to Fed/State/Local order or by direction of healthcare provider, or is experiencing symptoms of COVID-19	NO	YES	NO	YES (2/3 regular rate up to \$200/day up to 80 hours)	YES benefits normally paid by employer continue	NO	HR 6102, Sec. 3102(a)(1); 29 USCA 2612; 29 USCA 2614(a)(2) and HR 6201, Sec. 5102(a)(4)(5)(6) and Sec. 5110(5)(A)(ii)(I) and Sec. 5110(5)(B)(iii)	2 Weeks Paid
7	YES	SICK	Employee required to quarantine or isolate due to Fed/State/Local order or direction of healthcare provider, or experiencing symptoms of COVID-19 (if employee is reported to have been infected with Coronavirus in the course and scope of employment make prompt report of claim to work comp insurer)	NO	YES	NO	YES (full pay reg rate up to \$511/day up to 80 hours)	YES benefits normally paid by employer continue	NO	HR 6102, Sec. 3102(a)(1); 29 USCA 2612; 29 USCA 2614(a)(2) and HR 6201, Sec. 5102(a)(1)(2)(3) and Sec. 5110(5)(A)(ii)(I)	2 Weeks Paid

This table is for training purposes only and is not legal advice. You should consult with legal counsel to review your particular circumstances. This is a quickly evolving issue. Proposed amendments are pending. You should seek the most current information that applies to your circumstances.