



Michigan Coalition to End Domestic & Sexual Violence

## **Families First Coronavirus Response Act: Employee Expanded Family and Medical Leave Rights**

### *Impact on DV/SA Agencies*

#### **1. Does this apply to DV/SA agencies?**

Yes. The expansion applies to employers of fewer than 500 employees. There are some limited exceptions that may be available for employers of under 50 or under 25 employees, but those exemptions do not appear to be applicable to DV/SA agencies and the details of how to request such an exemption are not yet clear. It is likely best for agencies to proceed under the assumption that these requirements do apply to their work.

#### **2. What employees are covered?**

Sick leave applies to all employees regardless of their length of employment. Employees employed for at least 30 days are eligible for up to an additional 10 weeks of paid family leave (see leave details below). Where the employee can foresee the need for leave, the employee should make best efforts to alert the employer and plan for the leave. The employer may also require reasonable notice of a continuing need for leave.

#### **3. What are the leave and payment requirements?**

The requirements vary somewhat in connection with the reason for leave:

- Employees who are unable to work because the employee is quarantined, and/or experiencing COVID-19 symptoms, and seeking a medical diagnosis can receive two weeks (up to 80 hours) of paid sick leave at 100% of the employee's pay.<sup>1</sup>

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<sup>1</sup> It is unclear whether the Department of Labor is will interpret community-wide isolation orders, such as Governor Whitmer's stay-home order [2020-21](#), as "quarantine" or "isolation" under within the meaning of this section. If an employer chooses to offer sick pay to a healthy employee who is not caring for a child or someone subject to quarantine, who is unable to work only because COVID-related circumstances have resulted in lack of work for the employee, then the employer runs a substantial risk that such sick pay may not be reimbursable under the FFCRA.

- An employee who is unable to work because of a need to care for an individual subject in quarantine or to care for a child whose school is closed or child care provider is unavailable for reasons related to COVID-19, can receive two weeks (up to 80 hours) of paid sick leave at 2/3 the employee's pay.
- A full-time employee who has been employed for over 30 days and who is unable to work due to a need to care for a child whose school is closed or child care provider is unavailable for reasons related to COVID-19, may receive up to an additional ten weeks of expanded paid family and medical leave at 2/3 the employee's pay.<sup>2</sup>

Employers must permit employees to use the new paid sick time before any other leave provided by the employer. The employer is also not permitted to require that employees seek out someone to cover shifts or responsibilities for the employee before allowing the employee to take the sick time.

#### **4. Will employers be reimbursed for paid sick leave?**

Yes. The U.S. Department of Treasury is currently working on a process to allow employers to receive reimbursements. The department has stated that its goal is to have requests processed within two weeks. The department is expected to release those processes in early April. The department has thus far released the following notice explaining reimbursements to employers: <https://www.dol.gov/newsroom/releases/osec/osec20200320>

#### **5. How can shelters prepare and respond?**

The law builds in an expectation that employers will make their best efforts over the first thirty days to comply with this law, the employer will not be punished if it is making good-faith efforts to comply. That said, employers may not discriminate against employees who use the leave under this Act and the Department of Labor has committed to investigate alleged violations. Employers will be required to post a notice that is expected to be made available on March 25, 2020. This notice will likely be posted here: <https://www.dol.gov/agencies/whd/pandemic>

Every agency will likely find its own most effective way to comply or re-allocate work amongst employees. The Coalition recommends that agencies center efforts on economic justice and allow employees to use telecommuting to the greatest extent possible. If agencies spread remote tasks for the agency among as many different employees as possible and secure the most flexibility possible with any essential, in-person tasks, this will ensure that the majority of employees are able to remain working. The Coalition is here to support agencies as they navigate this situation and to help consider what activities could be made remote and how. Every agency is different, so the Coalition also encourages agencies to connect with local counsel to assess how to best comply with these requirements in their own contexts.

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<sup>2</sup> The total amounts are subject to caps. For 100% reimbursement, caps are at \$511 per day and \$5,110 in the aggregate (over a 2-week period), and for 2/3 reimbursement, caps are at \$200 per day and \$2,000 in the aggregate (over a 2-week period).

This Table is intended to inform employers of different legal provisions as they assess potential leave and employment decisions, this cannot take the place of individualized legal advice and should not be construed as legal advice.

Type of employee	Status of work / Reason for leave	Pay Amt	How employer can pay for it	Duration of leave	Notes, Tips, and Creative Work-Arounds
Essential	Employee corresponds remotely as much as possible with survivors and works in-person on a limited basis for essential duties such as shelter and court accompaniment; to fill additional time employee engages in professional development	100%	Grant funding	N/A	Coalition will work on a personal, tailored plan with you to support you in discerning the best way to use professional development time
Non-essential	Employee continues working remotely on projects and engages in remote meetings as needed; to fill additional time if necessary employee engages in professional development	100%	Grant funding	N/A	Coalition will work on a personal, tailored plan with you to support you in discerning the best way to use professional development time
Essential & Non-essential	Emergency Administrative Leave based on board-approved process specific to employer	100%	Grant funding	Determined by Employer	Coalition will work with you to craft a plan that is consistent with funder requirements
Essential	Employee has been quarantined <sup>3</sup> (pursuant to	100%	Retention of payroll taxes	80 hours	- Leave cannot be taken intermittently if taken for these

<sup>3</sup> It is unclear whether the Department of Labor is will interpret community-wide isolation orders, such as Governor Whitmer’s stay-home order [2020-21](#), as “quarantine” or “isolation” under within the meaning of this section. If an employer chooses to offer sick pay to a healthy employee who is not caring for a

	Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis		and seeking credit from Treasury		reasons unless employee can perform tasks remotely -Employer cannot require employee to take company-provided leave first
Non-essential	Employee has been quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis	100%	Retention of payroll taxes and seeking credit from Treasury	80 hours	-Leave cannot be taken intermittently if taken for these reasons unless employee can perform tasks remotely -Employer cannot require employee to take company-provided leave first
Essential	Need to care for quarantined individual, child whose school or daycare are closed, or a similar reason	At least 2/3	Retention of payroll taxes and seeking credit from Treasury	80 hours	-Leave cannot be intermittently if taken because of caring for individual subject to quarantine unless employee can perform tasks remotely -Employer can use employee's paid time off to supplement the other third of time if employer offers and employee accepts -Definition of child is broad and can include adult dependent children with disability and also children being cared for "in loco parentis" or those who the

child or someone subject to quarantine, who is unable to work only because COVID-related circumstances have resulted in lack of work for the employee, then the employer runs a substantial risk that such sick pay may not be reimbursable under the FFCRA.

					<p>employee provides day-to-day care for child</p> <ul style="list-style-type: none"> <li>-Employer cannot require employee to take company-provided leave first</li> </ul>
Non-essential	Need to care for child whose school or daycare are closed, or a similar reason	At least 2/3 ordinary income	Retention of payroll taxes and seeking credit from Treasury (it is unlikely that Treasury will reimburse more than 2/3 of ordinary income)	80 hours	<ul style="list-style-type: none"> <li>- Leave cannot be taken intermittently if taken because of caring for individual subject to quarantine unless employee can perform tasks remotely</li> <li>-Employer can use employee's paid time off to supplement the other third of time if employer offers and employee accepts</li> <li>-Definition of child is broad and can include adult dependent children with disability and also children being cared for "in loco parentis" or those who the employee provides day-to-day care for child</li> <li>-Employer cannot require employee to take company-provided leave first</li> </ul>
Essential or non-essential employees who have been	Need to care for child whose school or daycare are closed	At least 2/3 ordinary income	Retention of payroll taxes and seeking credit from Treasury (it is unlikely that	Up to 10 additional weeks past initial 80 hours above	<ul style="list-style-type: none"> <li>- Leave cannot be taken intermittently if taken because of caring for individual subject to quarantine unless employee can perform tasks remotely</li> </ul>

employed 30 days or more by agency			Treasury will reimburse more than 2/3 of ordinary income)		<ul style="list-style-type: none"> <li>-Employer can use employee's paid time off to supplement the other third of time if employer offers and employee accepts</li> <li>-Definition of child is broad and can include adult dependent children with disability and also children being cared for "in loco parentis" or those who the employee provides day-to-day care for child</li> <li>-It appears that FMLA time that has already been used can be counted against the availability of this time if the agency is ordinarily a covered employer</li> </ul>
Essential & Nonessential	Work Share unemployment because employer does not have enough work for the individual simply as a result of stay-home order and employee has not started any of the above types of leave or expressed an intent to do so	100% pay for hours worked; corresponding percentage of unemployment benefit for hours furloughed	Set up payment for employee in cooperation with unemployment	Determined by plan with unemployment	<ul style="list-style-type: none"> <li>-Definition of child is broad and can include adult dependent children with disability and also children being cared for "in loco parentis" or those who the employee provides day-to-day care for child</li> <li>-Using this version and promising to retain workers may allow agency to remain eligible for small business loans</li> </ul>
Essential & Nonessential	Full layoff because employer does not have enough work for the individual simply as a result	Benefits determined by Unemployment Insurance	N/A	Determined by employer if	-If employees are laid off and not brought back there may be implications for small business loan eligibility

	of stay-home order and employee has not started any of the above types of leave or expressed an intent to do so	Agency under expanded eligibility			
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**Scenarios**

1. Staff person responsible for supporting shelter in person for the first shift cannot report to work because her children are home during the day. This employee’s tasks would be deemed essential.
  - a. Option 1: If possible and supportive of all employees involved, a simple shift change may facilitate employee changing to an evening shift if there is an alternate time when the employee could work and another staff member willing to step in to the first shift. Everyone involved should receive their ordinary rate of pay regardless of what type of task they are performing.
  - b. Option 2: ED could offer full pay for telework and employee can come up with a plan alongside supervisor. Payment remains the same as usual and ED could train alternate staff person to perform shelter duties to retain full employment for that other staff member.
  - c. Option 3: ED could craft administrative leave policy and grant shelter staff person administrative leave for some or all of the time she is out caring for her children.
  - d. Option 4: ED could offer at least 2/3 salary sick pay under FFCRA and seek reimbursement through withholding of payroll taxes and credit through Treasury. ED could offer employee option to take 1/3 via any existing PTO.
2. Legal advocate responsible for accompanying survivors, attending court, and facilitating PPOs is healthy and does not have children or other dependents to care for. However, tasks become limited because courts are closed and survivors are finding fewer opportunities to talk given the stay-home order, etc. This employee is essential.
  - a. Option 1: ED could offer full pay for telework and employee can come up with a plan alongside supervisor. Payment remains the same as usual. Advocate can perform whatever tasks possible virtually and perform in-person tasks as needed.

- b. Option 2: ED could create emergency administrative leave policy to supplement hours that the employee is not able to fill pursuant to the agency's internal policies.
  - c. Option 3: Because this employee is likely not eligible for FFCRA payment, a work-share unemployment plan may be a best option to retain the employee and cover hours that cannot be filled.
- 3. Development Director reports having a fever and other COVID symptoms and although they feel "fine" according to them, they are not able to work a full day. This employee would likely be considered "non-essential."
  - a. Option 1: ED should offer 2 weeks paid leave under FFCRA, if the employee genuinely feels well enough to work and would like to telecommute for part of that time, employee and employer can come up with an intermittent work plan. For example, if there is a sexual assault awareness month email blast they desperately want to finish.
  - b. Option 2: Only after employee has exceeded 80 hours paid sick leave and only if the employee does not have dependents to care for due to school closures, then PTO or ordinary FMLA if applicable will come in.
- 4. Thrift store manager has been furloughed due to store closure and went on unemployment in the third week of March. Thrift store manager now has children home because of school closures. This task would be deemed non-essential.
  - a. Option: employee should remain on unemployment. They cannot become eligible for FFCRA leave as of today's date.
- 5. Thrift store manager has taken PTO and worked on other projects intermittently over the past two weeks. Thrift store manager now has children home because of school closures. This task would be deemed non-essential.
  - a. Option 1: ED can work with manager and their supervisor to come up with professional development and other useful tasks, or manager could voluntarily take over other employees' tasks that are essential if everyone involved is interested in that plan.
  - b. Option 2: ED can offer emergency administrative leave to supplement hours that the employee is not able to fill pursuant to the agency's internal policies.
  - c. Option 3: ED can offer at least 2/3 salary sick pay under FFCRA and seek reimbursement through withholding of payroll taxes and credit through Treasury. ED could offer employee option to take 1/3 via any existing PTO.