



January 5, 2021 Update (#251)

**To:** Board Members & Residents  
**From:** Charles H. Greenthal Management Corp.  
**Re:** *FFCRA Protected Paid Leave Expired 12/31/20 & NYS Emergency Paid Sick Leave*

As you may be aware, the paid leave provisions provided under the First Coronavirus Response Act ("FFCRA") expired December 31, 2020. As such, employers are no longer required to provide FFCRA leave after 12/31/200 – but may continue to do so voluntarily if they so choose to – provided it is not done in a discriminatory manner.

We thought it would be helpful to provide you with a summary of some of the new guidance provided by the United States Department of Labor, related to the expiration of the FFCRA.

## Updated FFCRA Guidelines

### Limited Time Frame for Law's Application

The obligation to provide FFCRA leave applies from the law's effective date of April 1, 2020, through Dec. 31, 2020, the DOL stated. Any change to extend the requirement to provide leave under the FFCRA would require an amendment to the law by Congress, the department observed, but there has been no such amendment.

([DOL FAQ No. 104](#))

### Coronavirus Relief Package Includes Key Workplace Provisions

President Donald Trump signed a bill Dec. 27, 2020, to fund the government and provide economic relief in response to the pandemic, as well as expand the Coronavirus Aid, Relief and Economic Security Act's Paycheck Protection Program. The package also extended the refundable employer payroll tax credit for paid sick and family leave through March 2021, though the FFCRA paid sick and family leave obligations were not extended.

### Good-Faith Efforts to Extend Leave

Employers are not required, by law, to continue to provide staff with FFCRA leave after December 31, 2020. This said, employers may voluntarily decide to continue providing COVID-19 related leave benefits. The obligation to provide FFCRA leave allies to the law's effective dates, which ran from April 2, 2020, through December 31, 2020. Any change to extend the requirement to provide leave under the FFCRA would require an amendment to the statute by Congress. The Consolidated Appropriations Act, 2021, extended employer tax credits for paid sick leave and expanded family and medical leave voluntarily provided to employees until March 31, 2021. However, this Act did not extend an eligible employee's entitlement to FFCRA leave beyond December 31, 2020. Employers with questions about claiming the refundable tax credits for qualified leave wages should consult with the IRS. Information can be found on the IRS website (<http://www.irs.gov/coronavirus/new-employer-tax-credits>).

*"As of now, there is no requirement to extend leave under the FFCRA into 2021,"* said Adam Kemper, an attorney with Greenspoon Marder in Fort Lauderdale, Fla. But, he added, *"employers should not rush back employees who are ill or who may be a risk for spreading the COVID-19 virus to others, even if it costs the company some money out of pocket."* Gus Sandstrom, an attorney with Blank Rome in Philadelphia, said, *"Employers should also advise employees as to their options for continued leave, paid or unpaid, beginning Jan. 1."*

### Owed FFCRA Leave Must Be Paid

If an employer failed to pay an employee for FFCRA leave taken or requested during the effective period of April 1, 2020, through Dec. 31, 2020, please be aware that employees may file a complaint with the DOL so long as they do so within two years. There also may be a private right of action for alleged violations. The FFCRA covers businesses with fewer than 500 employees and certain public employers.

([DOL FAQ No. 105](#))

## NYS Emergency Paid Sick Leave Guidelines

In response to the outbreak of novel coronavirus (COVID-19) in New York State, Governor Andrew M. Cuomo signed a bill guaranteeing workers job protection and financial compensation in the event they, or their minor dependent child, are subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the Department of Health, local board of health, or any government entity duly authorized to issue such order due to COVID-19.\* See [Guidance For Obtaining An Order For Mandatory Or Precautionary Quarantine](#).

Most employees will get financial compensation by using a combination of benefits, which may include new employer-provided paid sick leave (depending on the size of the employer), Paid Family Leave and disability benefits. These benefits are not available to employees who are able to work through remote access or other means.

As things stand, no expiration date has been indicated for NYS Emergency Paid Sick Leave.

The amount of paid sick time employees receive, depends on the employer's size and annual income:

Employer Size	Net Income	Requirement
1-10 Employees (as of 1/1/20)	\$1 million or less in 2019	Employer is not required to provide new paid sick days. Instead, employees are directed to use standard Paid Family Leave and or disability benefits
1-10 Employees (as of 1/1/20)	Over \$1 million in 2019	Employers must provide at least five (5) paid sick days
11-99 employees as of (as of 1/1/20)		Employers must provide at least five (5) paid sick days
100 or more employees (as of 1/1/20)		Employers must provide at least fourteen (14) paid sick days
Public Employers of ANY size		Employers must provide at least fourteen (14) paid sick days

Paid Family Leave may be used for those who are required to quarantine or care for a family member (including minor dependent child) who has contracted COVID-19, which may qualify as a serious health condition.

*Note: These benefits are not available to New Yorkers who take non-work-related trips to any state other than a contiguous state for more than 24 hours.*

For more information about NYS Emergency Paid Family Leave go to <https://paidfamilyleave.ny.gov/COVID19>

Management will continue to provide updates and reports on any relevant changes or developments that may impact your buildings, as new information becomes available.