



COVID-19 RELATED LEAVES UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT ("FFCRA")



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OVERVIEW

Emergency Paid Sick Leave

- Began April 1, 2020 – not retroactive
- Six qualifying reasons
- Up to 80 hours
- Full pay or 2/3 pay (depends on the qualifying reason)

Expanded FMLA

- Began April 1, 2020 – not retroactive
- One qualifying reason: when an employee is unable to work (**or telework**) to care for a minor child if the child's school or place of care has been closed or is unavailable due to a public health emergency
- Up to 12 weeks
- Weeks 1 & 2 - unpaid
- Weeks 3 to 12 – 2/3 pay



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EMERGENCY PAID SICK LEAVE QUALIFYING REASONS

Full Pay
Up to \$511 a day and
\$5110 in the aggregate
(over 2 weeks)

2/3 Pay
For reasons (4) or (6) - Up
to \$200 a day and \$2000 in
the aggregate (over 2
weeks)
For reason (5) - up to \$200
a day and \$12000 in the
aggregate (over 12
weeks)

- An employees entitled to Emergency Paid Sick Leave if the employee is unable to work (or telework) due to a need for leave because the employee:
 - (1) is 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 related to COVID-19;
 - (3) is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
 - (4) is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
 - (5) is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
 - (6) is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.



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DURATION OF LEAVE

- **For reasons 1 to 4 & 6**
 - A full-time employee is eligible for 80 hours of leave
 - A part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.
- **For reason 5 – to care for child due to school or place of care being closed**
 - A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of Expanded Family and Medical leave).
 - A part-time employee is eligible for the number of hours of leave that the employee is normally scheduled to work over that time period.



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EXPANDED FMLA CALCULATION OF PAY

- **For leave reason (5):** employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher
 - up to \$200 per day and \$12,000 in the aggregate (over a 12-week period).
 - An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave under this section.



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EMPLOYEE ELIGIBILITY

Emergency Paid Sick Leave

- Eligible on **first day** employment
- Includes full-time and part-time employees

Expanded FMLA

- An eligible employee is defined in the act as “an employee who has been employed for **at least 30 calendar days** by the employer”
- Includes full-time and part-time employees



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EMPLOYEE'S EXCLUDED

- Health care providers
- Emergency responders
- Employees who work for companies with 500 or more employees



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EMPLOYERS COVERED

- Private employers with **fewer than 500** employees
- Public agencies (including federal/state governments, political subdivisions, schools)
- Only for Emergency Paid Sick Leave “Any other entity that is not a private entity”



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SMALL BUSINESSES WITH LESS THAN 50 EMPLOYEES

- Small businesses with less than 50 employees may be qualify for an exemption from the requirements to provide leave **due to school closings or child care unavailability** if these leave requirements would jeopardize the viability of the business as a going concern.



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EMPLOYEE PROTECTIONS

- No retaliation because he/she
 - took emergency paid sick leave or expanded FMLA; **OR**
 - because he/she filed any type of complaint or proceeding related to the FFCRA, or has or intends to testify in any such proceeding.
- Restored to the same or an equivalent position when they return from paid sick leave or expanded FMLA
 - **Note:** This excludes
 - a “key” employee as defined under the FMLA; **OR**
 - Employee works at a business with 25 or less employees and took leave to care for his/her child due to school closure or child’s school or place of care has been closed or is unavailable due to a public health emergency
- Enforcement
 - Began April 17, 2020
 - Enforcement actions will be brought forth the by the U.S. Department of Labor’s Wage and Hour Division



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EMPLOYEES BEWARE!

- If the employer has less than 25 employees, and the employee took leave to care for his/her child whose school or place of care was closed the employer may refuse to return the employee to the same position if:
 - The position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of the employee's leave;
 - the employer made reasonable efforts to restore the employee to the same or an equivalent position;
 - the employer makes reasonable efforts to contact the employee if an equivalent position becomes available; and
 - the employer continues to make reasonable efforts to contact the employee for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after the leave began, whichever is earlier.
- An employee who takes a leave under the FFCRA is not protected from layoffs that would have affected the employee regardless of whether he/she took leave.
 - The employer can still lay off the employee for a legitimate business reasons.



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INFORMATION REQUIRED WHEN REQUESTING LEAVE

If requesting leave for any qualifying reason, except to care for child because of school closure:

- Your name;
- The date(s) for which you request leave;
- The reason for leave; and
- A statement that you are unable to work because of the above reason.
- Provide notice after the first workday that the employee takes emergency paid leave

If requesting leave because your child's school or place of care is closed

- The name of your child;
- The name of the school, place of care, or child care provider that has closed or become unavailable; and
- A statement that no other suitable person is available to care for your child.
- Provide notice as soon as practical



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DOCUMENTATION REQUIREMENTS CONTINUED

If you request leave because you are subject to a quarantine or isolation order or to care for an individual subject to such an order:

- Provide the name of the government entity that issued the order

If you request leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice,

- Provide the name of the health care provider who gave advice.







New COVID-19
Unemployment
Rules



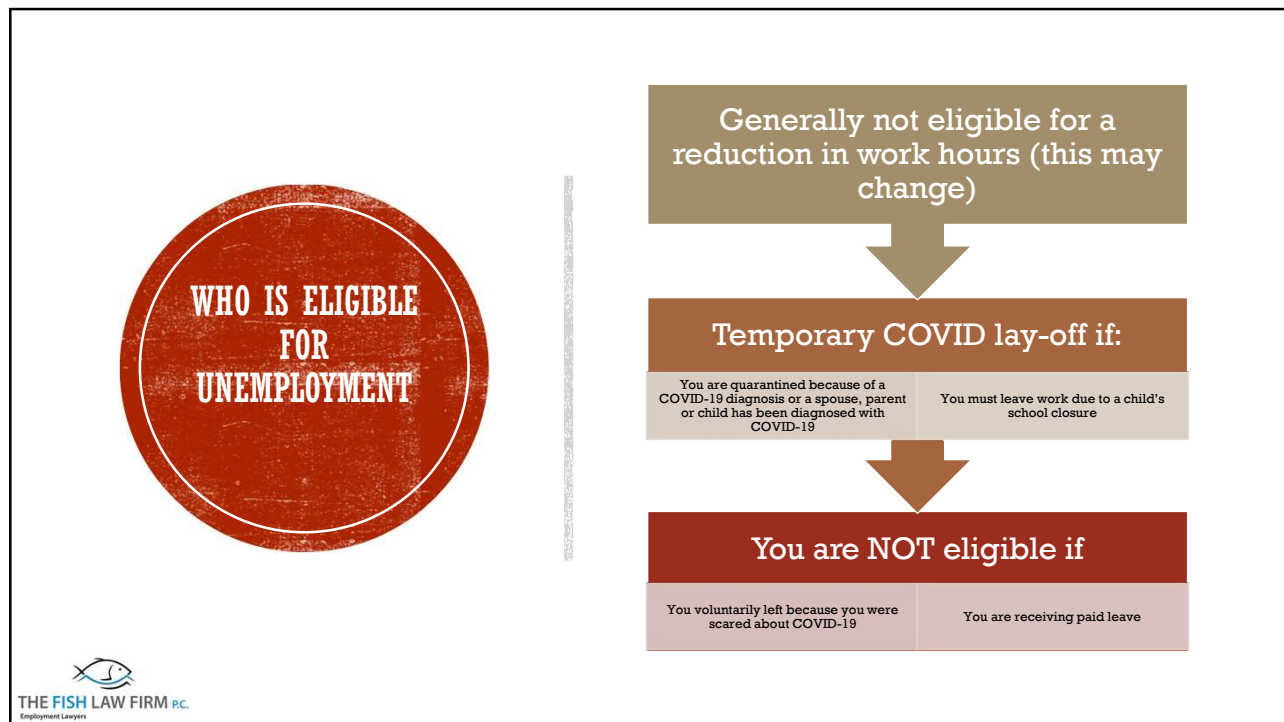
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MAJOR CHANGES TO UNEMPLOYMENT ELIGIBILITY RULES IF LAID OFF DUE TO COVID

- No waiting week
- No need to apply for other jobs
 - You still need to certify
- Extra \$600/week – PUC Benefit
 - In Illinois, that started on the week of 4/6
- More than the 26 weeks of Benefits
 - Federal relief currently allows for an additional 13 weeks of benefits (39 total)
- Independent contractors and self-employed individuals
 - This is a federal benefit
 - ½ of the state's average weekly benefit and the \$600 weekly payment
 - Not really there yet in Illinois – Just apply!!

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HOW MUCH WILL YOU GET IN BENEFITS

- Generally, 47% of your weekly earnings
 - Taking the 2 highest earning quarters of the 4 earliest of the 5 quarters preceding the application
 - Adding the 2 highest earning quarters, multiply by 47%, then divide by 26 for weekly benefit amount
- Maximum Benefit: \$484
- Plus the \$600 federal benefit
- You can get higher percentages for dependents (spouse and children)
- You can earn up to $\frac{1}{2}$ of your weekly benefit amount and still receive benefits

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**ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY
TABLE 1 OF WEEKLY BENEFIT AMOUNTS**

(Applies only to benefit years and weeks of unemployment beginning on or after 1/1/2020.)

Minimum Qualifying Wages:
In Base Period = \$1600
Outside High Quarter = \$440

Statewide Average
Weekly Wage • (SAWW)
\$1,029.39

Maximum WBA
Individual
\$484.00

Maximum WBA
w/ Spouse
\$577.00

Maximum WBA
w/ Child
\$669.00

Base-Period Wages in Two Highest Quarters (Minimum - Maximum)	Prior Average Weekly Wage (Minimum - Maximum)	Weekly Benefit Amount [rate=47.0%]	Non-Working Spouse Allowance [rate=9.0%]	Total	Dependent Child Allowance [rate=17.9%]	Total
\$0.00 - \$799.99	\$0.00 - \$31.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
\$800.00 - \$2,820.99	\$31.00 - \$108.00	\$51.00	\$15.00	\$66.00	\$26.00	\$77.00
\$2,821.00 - \$2,872.99	\$109.00 - \$110.00	\$52.00	\$15.00	\$67.00	\$26.00	\$78.00
\$2,873.00 - \$2,924.99	\$111.00 - \$112.00	\$53.00	\$15.00	\$68.00	\$27.00	\$80.00
\$2,925.00 - \$2,976.99	\$113.00 - \$114.00	\$54.00	\$15.00	\$69.00	\$27.00	\$81.00
\$2,977.00 - \$3,054.99	\$115.00 - \$117.00	\$55.00	\$15.00	\$70.00	\$28.00	\$83.00
\$3,055.00 - \$3,106.99	\$118.00 - \$119.00	\$56.00	\$15.00	\$71.00	\$28.00	\$84.00
\$3,107.00 - \$3,158.99	\$120.00 - \$121.00	\$57.00	\$15.00	\$72.00	\$29.00	\$86.00
\$3,159.00 - \$3,210.99	\$122.00 - \$123.00	\$58.00	\$15.00	\$73.00	\$29.00	\$87.00
\$3,211.00 - \$3,262.99	\$124.00 - \$125.00	\$59.00	\$15.00	\$74.00	\$30.00	\$89.00
\$3,263.00 - \$3,314.99	\$126.00 - \$127.00	\$60.00	\$15.00	\$75.00	\$30.00	\$90.00
\$3,315.00 - \$3,366.99	\$128.00 - \$129.00	\$61.00	\$15.00	\$76.00	\$31.00	\$92.00
\$3,367.00 - \$3,418.99	\$130.00 - \$131.00	\$62.00	\$15.00	\$77.00	\$31.00	\$93.00
\$3,419.00 - \$3,496.99	\$132.00 - \$134.00	\$63.00	\$15.00	\$78.00	\$32.00	\$95.00
\$3,497.00 - \$3,548.99	\$135.00 - \$136.00	\$64.00	\$15.00	\$79.00	\$32.00	\$96.00
\$3,549.00 - \$3,600.99	\$137.00 - \$138.00	\$65.00	\$15.00	\$80.00	\$33.00	\$98.00



WEEKLY BENEFIT AMOUNTS

<https://www2.illinois.gov/ides/IDES%20Forms%20and%20Publications/CI110L.pdf>

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HOW TO APPLY/CHALLENGES

- The system is overwhelmed – in the first week, more than 178,000 Illinois residents applied for benefits (source: <https://www.chicagotribune.com/coronavirus/ct-coronavirus-pandemic-chicago-illinois-news-20200402-2ywu5ui4ffb7xkvsj7nkm6aidy-story.html>)
- Apply Online:
<https://www2.illinois.gov/ides/aboutides/Pages/10%20Things%20You%20Should%20Know.aspx>
 - Check the box at bottom then the real link appears
 - You can only file certain days:
 - Those with last names beginning with letters **A-M** will be asked to file their claims on Sundays, Tuesdays, or Thursdays.
 - Those with last names beginning with letters **N-Z** will be asked to file their claims on Mondays, Wednesday, Fridays.
 - Saturdays will be available for anyone to accommodate those who could not file during their allotted window.
 - <https://www2.illinois.gov/ides/individuals/UnemploymentInsurance/Pages/default.aspx>
 - You can only call certain days:
 - Those with last names beginning with letters **A-M** will be asked to call on Tuesdays and Thursdays between 7:30am – 6pm.
 - Those with last names beginning with letters **N-Z** will be asked to call on Mondays and Wednesdays between 7:30am – 6pm.
 - Fridays (7:30am – 6pm) will be available for anyone to accommodate those who could not file during their allotted window.
- 2-3 hour wait times on hold – if you can even get through



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EMPLOYER ISSUES DURING THE COVID 19 PANDEMIC

*Complying With Legal Requirements In A Period Of
Unparalleled Disruption*



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REMOTE WORKING CREATES ITS OWN HAZARDS

- Make Sure That Confidential and Personal Information Remain Protected.
- Determine How Work Time Will Be Tracked
- Ensure Employees Remain Productive Even When Not Directly Supervised



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ISSUES FACING ESSENTIAL BUSINESSES

- How Does A Business Protect Its Workers From COVID-19?
 - *Is there a legal obligation to do so?*
 - *Problems Arising From Testing.*
 - *Ensuring Workplace Safety and Hygiene*
- What Should A Company Do About Recalcitrant Employees?



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WHAT SHOULD REOPENING EMPLOYERS ANTICIPATE?

- Always must remember how employment laws will still apply in these changed circumstances.
 - *Decisionmaking during layoffs or recalls from layoffs.*
 - *The ADA and COVID-19*
 - *Harassment against minority groups attributing blame for the pandemic.*
- *Planning for Coronavirus-related Claims*



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