



## UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

Employee Services

### **Fact Sheet: Federal Employee Coverage under the Leave Provisions of the Families First Coronavirus Response Act (FFCRA) (Public Law 116-127, March 18, 2020)**

#### **Division E—Emergency Paid Sick Leave Act**

Division E of the FFCRA provides up to two weeks (up to 80 hours) of emergency paid sick leave to all Federal civil service employees in specified circumstances related to COVID-19—unless they are in an exempted category as described below. This paid sick leave is in addition to any other paid leave entitlements. Depending on the circumstances, the sick leave is paid at the Fair Labor Standards Act (FLSA)-based regular rate of pay for an employee or two-thirds of that rate (subject to statutory limitations on daily and aggregate cash value of paid leave). Paid sick leave under division E is available for use during the period from April 1, 2020, through December 31, 2020. The Department of Labor issued regulations under the emergency paid sick leave law, and has posted information and guidance on the leave provisions of the Act at <https://www.dol.gov/agencies/whd/pandemic>.

A Federal agency employing a health care provider or an emergency responder may elect to exclude such employee from coverage under division E.

The Director of the Office of Management and Budget (OMB) may, for good cause, exclude certain categories of Federal employees from coverage under division E.<sup>1</sup>

#### **Division C—Emergency Family and Medical Leave Expansion Act<sup>2</sup>**

Division C of the FFCRA provides for expanded family and medical leave (“expanded FMLA leave”) during the period from April 1, 2020, through December 31, 2020, because a covered employee (see coverage discussion below) is unable to work in person or telework due to a need to care for the employee’s eligible child (i.e., a “son or daughter” as defined in Department of Labor regulations) because the child’s school or place of care has been closed or the child’s care provider is unavailable as a result of the COVID-19 public health emergency. Division C further provides that the first 10 days of expanded FMLA leave is unpaid leave; however, an employee has the right to substitute either paid sick leave under division E or accrued paid leave for that initial unpaid leave. After the first two workweeks (usually 10 workdays), the employer must provide partially paid leave for any additional expanded FMLA leave (up to 10 weeks)—unless the employee elects or the employer requires the employee to concurrently use certain categories of an employee’s accrued leave (at the normal rate) with expanded FMLA leave, which would allow the worker to receive full pay. The leave is paid at two-thirds of the employee’s FLSA-based regular rate of pay (subject to statutory limitations on the daily and aggregate cash value of paid leave), except that concurrent use of accrued leave is paid at the full amount under the employer’s policies.

<sup>1</sup> See section 5112 of division E of the FFCRA, as added by section 3604(b) of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136, March 27, 2020).

<sup>2</sup> **Important:** Most Federal employees are not eligible for expanded FMLA leave, which is applicable only to certain Federal employees covered by title I of FMLA.

This expanded family and medical leave law is regulated by the Department of Labor, which has posted information and guidance on the leave provisions of the Act at <https://www.dol.gov/agencies/whd/pandemic>.

Coverage of Federal employees under division C depends on several factors:

- The employee must be covered by title I of FMLA, which is codified in title 29, United States Code, and generally administered by the Department of Labor.
- The employee must have been employed for at least 30 calendar days with the employer from whom leave is being requested. (Note: The normal FMLA requirements—that the employee have at least 12 months of service and at least 1,250 hours of service with the employer during the previous 12-month period—do not apply.)
- The employee is not exempted under section 3105 of FFCRA, which allows an employer to exclude from coverage an employee who is a health care provider or an emergency responder.
- The employee is not in a category for which the agency has obtained an exclusion from coverage from the Director of OMB.

Table A, below, identifies categories of Federal employees who are not eligible for the expanded family and medical leave under FFCRA because they are covered under title II of the FMLA, which is codified in title 5 of the United States Code. Table B, below, identifies Federal employees who are covered under division C of the FFCRA, because they are covered under title I of FMLA. Employees who otherwise qualify for coverage under division C may be exempted, as described above and in the following paragraph.

<b>Table A Federal Employees Who Are Covered by the Family and Medical Leave Act (FMLA) Provisions in Title 5, United States Code and Who, Therefore, <u>Are Not Covered</u> by the Expanded Family and Medical Leave Provisions Enacted in Division C of the Families First Coronavirus Response Act (FFCRA)</b>	
<b>Category</b>	<b>Notes</b>
<p><b>Any employee appointed in the civil service</b> who meets the definition of “employee” in 5 U.S.C. 2105, but <u>excluding</u>—</p> <ul style="list-style-type: none"> <li>• employees not covered by the title 5 annual and sick leave system, except as otherwise provided in this table;</li> <li>• employees of the <b>District of Columbia Government</b>, the <b>Government Accountability Office (GAO)</b>, and the <b>Library of Congress (LOC)</b>; and</li> <li>• temporary or intermittent employees.</li> </ul>	<p>See 5 U.S.C. 6381(1)(A) and 6301(2).</p> <p>NOTE 3: Employees with intermittent work schedules are specifically excluded by language in section 6381(1)(A) but also would have been excluded based on the reference to section 6301(2)(ii).</p> <p>The following categories of employees are excluded from coverage under the title 5 FMLA provisions based on exclusion from the title 5 annual and sick leave system:</p>

Category	Notes
<p>NOTE 1: Employees of the United States Postal Service and the Postal Regulatory Commission are not considered employees for the purpose of title 5 leave provisions. (See 5 U.S.C. 2105(e).) Other Executive branch employees are covered by title 5 FMLA provisions unless a specific exclusion applies to them. (See the right column and NOTE 5 at the end of this table.)</p> <p>NOTE 2: Judicial branch employees are generally covered by title 5 leave provisions, including title 5 FMLA provisions. (Except for certain article I courts, the Administrative Office of the United States Courts is responsible for addressing leave coverage issues for Judicial branch employees.)</p>	<ul style="list-style-type: none"> <li>• an employee of either House of Congress or of the two Houses (section 6301(2)(vi));</li> <li>• a leave-exempt Presidential appointee as described in section 6301(2)(x)-(xiii); and</li> <li>• other employees described in section 6301(2)(iii), (vii), or (viii).</li> </ul> <p>NOTE 4: See more information on Legislative branch employees in the row below dealing with employees of the Government Publishing Office.</p>
<p>An employee of the <b>Veterans Health Administration</b> who is covered by a leave system established under 38 U.S.C. 7421, excluding any temporary or intermittent employee.</p>	<p>Although not covered by the title 5 annual and sick system, these employees are covered by the title 5 FMLA provisions. (See reference to section 6301(2)(v) in 5 U.S.C. 6381(1)(A) and OPM regulations at 5 CFR 630.1201(b)(3)(i) and (4).) Note: See also 38 U.S.C. 7421</p>
<p>A <b>Department of Defense teacher</b> holding a “teaching position” as defined in 20 U.S.C. 901, excluding any temporary or intermittent employee.</p>	<p>Although not covered by the title 5 annual and sick system, these employees are covered by the title 5 FMLA provisions. (See reference to section 6301(2)(ix) in 5 U.S.C. 6381(1)(A) and OPM regulations at 5 CFR 630.1201(b)(3)(ii) and (4).)</p>
<p>An <b>employee of a nonappropriated fund instrumentality associated with the armed forces</b>, as described in 5 U.S.C. 2105(c), excluding any temporary or intermittent employee.</p>	<p>Although not covered by the title 5 annual and sick system, these employees are covered by the title 5 FMLA provisions. (See 5 U.S.C. 2105(c)(1)(E) and OPM regulations at 5 CFR 630.1201(b)(3)(iii) and (4).)</p>
<p>An employee of the <b>Government Publishing Office (GPO)</b>, excluding any temporary or intermittent employee.</p>	<p>GPO employees are civil service employees covered by the title 5 annual and sick leave system. This is the only category of employees in the Legislative branch covered by the title 5 FMLA provisions. The first row of this table identified exclusions of GAO employees, Library of Congress employees, and employees of the two Houses. Other Legislative branch employees are excluded because they are covered by the title 29 FMLA provisions pursuant to the Congressional Accountability Act of 1995. (See 2 U.S.C. 1301(3), 1302(a)(5), and 1312.) The Office of Congressional Workplace Rights administers the title 29 FMLA provisions for covered Legislative branch employees. GPO employees are not covered by the Congressional Accountability Act.</p>

Category	Notes
A Transportation Security Administration (TSA) employee who serves as a <b>Transportation Security Officer</b> (i.e., screeners), excluding any temporary or intermittent employee.	See section 7606 of subtitle A of title LXXVI of division F of Public Law 116-92, S. 1790, December 20, 2019. Section 7606 amended a law addressing the coverage of TSA screeners under various personnel laws, and expressly provided that TSA screeners are covered by the title 5 FMLA provisions. (See amendment to section 111(d)(2) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note).) TSA screeners are not covered by the title 5 annual and sick leave system.
NOTE 5: Some Federal employees would be otherwise covered by the title 5 FMLA provisions but for coverage under special personnel authorities possessed by their employing agency. Those special personnel authorities fall into one of two categories: (1) the law excludes their employees from coverage under the title 5 leave provisions; or (2) the law gives the agency discretionary authority to determine whether their employees are covered under the title 5 leave provisions. Agencies with special personnel authorities are responsible for informing their employees regarding whether the title 5 FMLA provisions apply. The general rule is that Federal employees who are not covered by the title 5 FMLA provisions are covered by the title 29 FMLA provisions (i.e., title I of FMLA). (See 29 U.S.C. 2611(2)(B)(i) and 29 CFR 825.109(c).) However, an agency with special personnel authorities may have a basis for determining that its employees are exempt from both the title 5 and the title 29 FMLA provisions.	

<b>Table B Federal Employees <u>Covered</u> by the Expanded Family and Medical Leave Provisions Enacted in Division C of the Families First Coronavirus Response Act (FFCRA)</b>	
Category	Notes
Employees of the <b>United States Postal Service</b> or the <b>Postal Regulatory Commission</b>	They are not covered by the title 5 FMLA provisions based on 5 U.S.C. 2105(e), read with 29 U.S.C. 2611(2)(B)(i).
<b>Legislative branch</b> employees, <i>except</i> employees of the <i>Government Publishing Office</i> .	See information on Legislative branch employees in Table A.
An employee with an <b>intermittent work schedule</b> (i.e., not part-time or full-time, no guarantee of any hours of work in any pay period).	See 5 U.S.C. 6381(1)(A), read with 29 U.S.C. 2611(2)(B)(i).
An employee with a <b>temporary appointment</b> (i.e., an appointment with a time limitation of one year or less).	See 5 U.S.C. 6381(1)(A), read with 29 U.S.C. 2611(2)(B)(i). No FMLA leave would be available after the temporary appointment ends.
An <b>employee of an Executive branch agency who is <u>not</u> covered by title II of FMLA (i.e., title 5 FMLA provisions)</b> —unless the agency has exercised a special personnel authority in statute to	See 29 U.S.C. 2611(2)(B)(i) and 29 CFR 825.109(c). See Table A—in particular, the first row and NOTE 5. Agencies with special personnel authorities are responsible for informing their

Category	Notes
exempt its employees from coverage under title I of FMLA (i.e., title 29 FMLA provisions).	employees regarding whether the FMLA provisions under title 5 or title 29 apply and whether division C of the FFCRA applies.
<p>NOTE: The Director of OMB may, for good cause, exclude certain categories of Federal Executive branch employees from the paid expanded family and medical leave. The OMB Director's exemption authority does not provide a complete exemption from division C; rather it applies only to the paid leave provisions in section 110(b) of title I of FMLA. This means that these employees would still be entitled to receive FMLA job-protected unpaid leave under 29 U.S.C. 2612(a)(1)(F).</p>	

## Department of Labor Regulations – Family and Medical Leave Act

### § 825.109 Federal agency coverage.

(a) Most employees of the government of the United States, if they are covered by the FMLA, are covered under Title II of the FMLA (incorporated in Title V [5], Chapter 63, Subchapter 5 [V] of the United States Code) which is administered by the U.S. Office of Personnel Management (OPM). OPM has separate regulations at 5 CFR Part 630, Subpart L. Employees of the Government Printing Office are covered by Title II. While employees of the Government Accountability Office and the Library of Congress are covered by Title I of the FMLA, the Comptroller General of the United States and the Librarian of Congress, respectively, have responsibility for the administration of the FMLA with respect to these employees. Other legislative branch employees, such as employees of the Senate and House of Representatives, are covered by the Congressional Accountability Act of 1995, 2 U.S.C. 1301.

(b) The Federal Executive Branch employees within the jurisdiction of these regulations include:

- (1) Employees of the Postal Service;
- (2) Employees of the Postal Regulatory Commission;
- (3) A part-time employee who does not have an established regular tour of duty during the administrative workweek; and,
- (4) An employee serving under an intermittent appointment or temporary appointment with a time limitation of one year or less.

(c) Employees of other Federal executive agencies are also covered by these regulations if they are not covered by Title II of FMLA.

(d) Employees of the judicial branch of the United States are covered by these regulations only if they are employed in a unit which has employees in the competitive service. For example, employees of the U.S. Tax Court are covered by these regulations.

(e) For employees covered by these regulations, the U.S. Government constitutes a single employer for purposes of determining employee eligibility. These employees must meet all of the requirements for eligibility, including the requirement that the Federal Government employ 50 employees at the worksite or within 75 miles.

**Coronavirus Aid, Relief, and Economic Security Act** (Public Law 116-136, March 27, 2020)

**SEC. 3604. OMB WAIVER OF PAID FAMILY AND PAID SICK LEAVE.**

(a) **FAMILY AND MEDICAL LEAVE ACT OF 1993.**—Section 110(a) of title I of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611 et seq.) (as added by division C of the Families First Coronavirus Response Act) is amended by adding at the end the following new paragraph:

“(4) The Director of the Office of Management and Budget shall have the authority to exclude for good cause from the requirements under subsection (b) certain employers of the United States Government with respect to certain categories of Executive Branch employees.”.

(b) **EMERGENCY PAID SICK LEAVE ACT.**—The Emergency Paid Sick Leave Act (division E of the Families First Coronavirus Response Act) is amended by adding at the end the following new section:

**“SEC. 5112. AUTHORITY TO EXCLUDE CERTAIN EMPLOYEES.**

“The Director of the Office of Management and Budget shall have the authority to exclude for good cause from the definition of employee under section 5110(1) certain employees described in subparagraphs (E) and (F) of such section, including by exempting certain United States Government employers covered by section 5110(2)(A)(i)(V) from the requirements of this title with respect to certain categories of Executive Branch employees.”.