

COVID-19 FAQ

3. Can an employer elect to exclude employees from paid sick leave under the Families First Coronavirus Response Act (“FFCRA”)?

Date Added: 03/30/20

Answer: Both Division C and Division E of the “Family First Coronavirus Response Act” include provisions that permit employers of health care providers or emergency responders to exclude those employees from the category of eligible employees.

For the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, an emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department of Labor encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.

The U.S. DOL has published an initial set of [Frequently Asked Questions \(FAQ\)](#) related to the emergency leaves provisions of the new law.