

## Pay for County Employees Affected by COVID-19

Following are broad scenarios that may arise as counties deal with the fallout of the COVID-19 virus. These examples reflect the law currently and will change when the new Families First Coronavirus Response Act takes effect on April 1, 2020. Guidance related to the Act begins on page 5. These examples are intended to be general and each county should review their personnel manual for specific guidance. Counties with unions should examine their collective bargaining agreements. Counties with civil service provisions should follow those requirements. All counties should consult their county attorney before implementing wage or leave changes.

Please note:

- Not all employees who are paid the same amount every pay period are considered to be “salaried” [exempt employees](#). Refer to the [Fair Labor Standards Act](#) for the appropriate categorization of all employees. Law enforcement and emergency personnel may be subject to different requirements.
- Specific situations may require different solutions. For example, if teleworking is a reasonable accommodation for a qualified individual with a disability or is required by a union contract, the general responses below may not apply.
- County employment practices, including teleworking and leave, cannot discriminate on the basis of race, sex, age (40 and over), color religion, national origin, disability, union membership, or veteran status.
- County officials must be paid for the term of office. ([Nebr. Const. Art. III, sec. 19](#)) The general guidance below does not apply.
- The general guidance does not address hours worked for purposes of health insurance and other benefits.

### Non-Exempt Full Time Employees

	Regular Pay	Vacation Leave	Comp Time	Sick Leave
Courthouse Public Access Suspended, Employees Working Full Hours in Courthouse	Employee paid under regular processes	Regular processes	Regular processes	Regular processes
Courthouse Public Access Suspended, Employees Working Partial Hours	Employee paid for hours worked	May use vacation to supplement pay for hours not worked	May use comp time to supplement pay for hours not worked	
Courthouse Public Access Suspended, Employees Working Full Hours Remotely	Employee paid under regular processes			

Courthouse Completely Closed, No Officials or Employees Working	Employee may not be paid severance pay or payment in advance of hours worked			
Employee Home Sick, Not Coronavirus				Regular sick leave, FMLA
Employee Home Caring for Sick Family Member				Regular sick leave, FMLA
Employee Home Caring for Children or Others, Not Sick		May use vacation. If leave is exhausted, consider leave of absence without pay	May use comp time. If leave is exhausted, consider leave of absence without pay	
Employee Self-Quarantine				Leave taken to avoid exposure is not protected by FMLA. Employee incapacitated by a serious health condition or caring for covered family members is covered by FMLA. FMLA is unpaid but county may elect or require substitution of paid sick and vacation leave for FMLA
Employee Quarantine Requested by County as Employer		May use vacation. If leave is exhausted, consider leave of absence without pay	May use comp time. If leave is exhausted, consider leave of absence without pay	May use sick leave. If leave is exhausted, consider leave of absence without pay

**Exempt Full-Time Employee**

Exempt, salaried employees generally must receive their full salary in any week in which they perform any work. Employers are not required to pay exempt, salaried employees in weeks in which they perform no work.

**Part-Time Employee**

	Regular Pay	Vacation Leave	Comp Time	Sick Leave
Courthouse Public Access Suspended, Employees Working Regular Hours in Courthouse	Employee paid under regular processes	Regular processes	Regular processes	Regular processes
Courthouse Public Access Suspended, Employees Working Partial Hours	Employee paid for hours worked	If vacation is available, may be used to supplement pay for hours not worked	If comp time is available, may be used to supplement pay for hours not worked	
Courthouse Public Access Suspended, Employees Working Regular Hours Remotely	Employee paid under regular processes			
Courthouse Completely Closed, No Officials or Employees Working	Employee may not be paid severance pay or payment in advance of hours worked			
Employee Home Sick, Not Coronavirus				See county sick leave policy for part time employees, FMLA
Employee Home Caring for Sick Family Member				See county sick leave policy for part time employees, FMLA
Employee Home Caring for Children or Others, Not Sick		May use vacation. If leave is exhausted, consider leave of absence without pay	May use comp time. If leave is exhausted, consider leave of absence without pay	
Employee Self-Quarantine				Leave taken to avoid exposure is not protected by FMLA. Employee

				incapacitated by a serious health condition or caring for covered family member is covered by FMLA. FMLA is unpaid but county may elect or require substitution of paid sick and vacation leave for FMLA
Employee Quarantine Requested by County as Employer		May use vacation. If leave is exhausted, consider leave of absence without pay	May use comp time. If leave is exhausted, consider leave of absence without pay	May use sick leave. If leave is exhausted, consider leave of absence without pay

## Pay for County Employees Affected by COVID-19 after April 1, 2020

Following are broad scenarios that may arise as counties deal with the fallout of the COVID-19 virus. These examples reflect the Families First Coronavirus Response Act which takes effect on April 1, 2020. These examples are intended to be general and each county should review their personnel manual for specific guidance. Counties with unions should examine their collective bargaining agreements. Counties with civil service provisions should follow those requirements. All counties should consult their county attorney before implementing wage or leave changes.

The “[Families First Coronavirus Response Act](#)” (FFCRA or the Act) - H.R. 6201 (2020) was signed by President Trump on March 18, 2020. Provisions included in division E – Emergency Paid Sick Leave Act and division C – Emergency Family and Medical Leave Expansion Act are discussed below. The Act’s new provisions take effect April 1, 2020 and the provisions sunset on December 31, 2020.

The Act applies to public agencies, including counties. Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements. The U.S. Department of Labor issued a [model notice](#) for employers to meet the Act’s requirements of posting notice.

<b>Emergency Paid Sick Leave (EPSLA)<sup>i</sup></b>	<b>Regular Pay</b>	<b>Vacation Leave</b>	<b>Sick Leave</b>
Full Time Employees	Generally, the employee is paid his/her regular rate of pay under emergency paid sick leave		80 hours
Part-Time	Generally, the employee is paid his/her regular rate of pay under emergency paid sick leave		Number of hours equal to the number of hours that such employee works, on average over a 2-week period
<b>Emergency Family and Medical Leave Act (EFMLA)<sup>ii</sup></b>	The first 10 days of leave may be unpaid; however, the employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave, including EPSLA provisions.	After the first 10 days of leave (until the 12 weeks of leave is exhausted), paid leave for an employee shall be calculated based on (I) an amount that is not less than 2/3 of an employee’s regular rate of pay as determined by the Fair Labor Standards Act of 1938 (FLSA); and (II) the number of hours the employee would normally be scheduled to work (or the number of hours calculated	

		under subparagraph (C) that provides a varying schedule from week to week). <u>In no event</u> shall such paid leave exceed \$200 per day and \$10,000 in the aggregate. Benefits would continue during the entire leave period.	
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<b>Covered Reason for Leave Under Emergency Paid Sick Leave</b>	<b>Rate of Pay</b>	<b>Cap on Payments</b>
The employee is subject to a Federal, State, or local quarantine isolation order related to COVID-19;	The employee's regular rate of pay (as determined under section 7(e) of the FLSA ( <a href="#">29 U.S.C. 207(e)</a> )).	\$511 per day and \$5,110 in the aggregate
The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;	The employee's regular rate of pay (as determined under section 7(e) of the FLSA ( <a href="#">29 U.S.C. 207(e)</a> )).	\$511 per day and \$5,110 in the aggregate
The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;	The employee's regular rate of pay (as determined under section 7(e) of the FLSA ( <a href="#">29 U.S.C. 207(e)</a> )).	\$511 per day and \$5,110 in the aggregate
The employee is caring for an individual who is subject to a quarantine order or advised to self-quarantine;	Two-thirds of the employee's regular rate of pay.	\$200 per day and \$2,000 in the aggregate
The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or	Two-thirds of the employee's regular rate of pay.	\$200 per day and \$2,000 in the aggregate
The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.	Two-thirds of the employee's regular rate of pay.	\$200 per day and \$2,000 in the aggregate

Guidance on the new Families First Coronavirus Response Act's provisions is available from the Wage and Hour Division of the U.S. Dept. of Labor at:

- [Families First Coronavirus Response Act: Employee Paid Leave Rights](#)
- [Families First Coronavirus Response Act: Employer Paid Leave Requirements](#)
- [Families First coronavirus Response Act: Questions and Answers](#)

### **Additional Resources**

#### Centers of Disease Control (CDC)

- [Travel](#)
- [Resources for Businesses and Employers](#)

#### Wage and Hour Division of the U.S. Department of Labor

- [Fair Labor Standards Act \(FLSA\)](#)
- [Family Medical Leave Act \(FMLA\)](#)

#### Equal Employment Opportunity Commission (EEOC)

- [Americans with Disabilities Act Amendment Act \(ADAAA\)](#)

#### Occupational Safety and Health Administration (OSHA)

#### NIRMA

- ["Message to Our Members re: COVID-19/Coronavirus"](#)
- [NIRMA Loss Prevention Training/Assistance COVID-19 Protocols](#)

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### **Emergency Paid Sick Leave Act (EPSLA)**

Under the EPSLA, employers must provide paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave for one of six potential reasons.

NOTE: Paid sick time under this section is in addition to other sick leave provisions an employer provides; therefore, an employer may not use current sick leave policies to satisfy this requirement. The paid sick leave shall not carry over from one year to the next. Further, paid sick time under this Act ends beginning with the employee's next scheduled work shift immediately following the termination of the sick leave under the EPSLA.

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The EPSLA is available for all employees regardless of the length of time the employee has worked for the employer. An employer may not require an employee to use other paid leave provided by the employer before the employee uses sick leave provided under these measures.

ii **Emergency Family and Medical Leave Act (EFMLA)**

From the April 1, 2020 until December 31, 2020, employees who have been on the job 30 days have the right to take up to 12 weeks of job-protected leave for a “Public Health Emergency.”

Several key definitions are relevant to determine the impact of the provisions to an employer:

- **Eligible employee** -one who has been employed for at least 30 calendar days with respect to whom the leave is requested.
- **Qualifying need related to a public health** emergency (an emergency with respect to COVID-19 declared by a Federal, State, or local authority – the President signed an emergency order on March 13, 2020 related to the COVID-19 outbreak as did Governor Ricketts and various counties throughout the state) - means the employee is unable to work (or telework) due to a need to care for the son or daughter under 18 years of age of such employee if the school or the place of care has been closed, or the child care provider of such son or daughter is unavailable due to a public health emergency.
- **Son or daughter** -a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is under 18 years. This definition remains the same under the new Act’s provisions.

As a result of the new legislation, covered employers are to allow employees to take up to 12 weeks of Public Health Emergency Leave if the employee is unable to work (or telework) due to a need to care for the son or daughter under 18 years of age of such employee if the school or the place of care has been closed, or the child care provider of such son or daughter is unavailable due to a public health emergency.