



Human Resources Q&A: Libraries and COVID-19

As libraries plan their phase-in approaches to service, discussions will inevitably lead to staffing and human resources considerations. The Families First Coronavirus Response Act (FFCRA) provides just one of several mitigating variables that play a part in employer responsibilities, in addition to the core practice of protecting employees.

Staff members and volunteers are your library's single-most valuable assets; *now is another opportunity to prove that your organization values the individuals providing services to your community.*

That said, managing employee fears, personal and personnel issues, and workplace safety can become a muddy prospect. CLiC's initial forecast of key human resources-related questions, both from library leaders and staff members, informs the basis of this guide.

Determining how to handle HR situations, including whether an employee qualifies for benefits under the FFCRA or other employer-offered leave programs, often requires complex, fact-intensive analysis. As employers, libraries should not make such decisions in haste.

This is not easy stuff! Because there is not yet any case law to which we can turn for guidance, CLiC is providing this guide as a tool and a starting point as your library evaluates its situations. Use this guide along with other suggestions, recommendations and best practices that you may come across in your own research.

And as always, *your library/organization is advised to seek additional perspective from a certified HR professional or legal counsel, depending on each employee situation.*

Overall Context: Be a Responsible Employer

Before deploying curbside/contactless material delivery or distribution services... Before re-opening brick-and-mortar buildings to patrons and students... Employers are advised to prepare for and deliver reasonable safety practices according to CDC, state and local health guidelines. Such efforts will prove to be an enormous, time-consuming burden for libraries in many ways – impacting everything from operations, budgets, staffing, procedures, policies, and more. Invest in training your staff on these safety practices.

These are worthwhile investments not only for ethical reasons, but to protect the organization's future... because HR and legal experts predict there will be a host of litigation and whistleblower complaints driven by employees who claim they are not being adequately protected by their employers during this unprecedented public health crisis.

Advance planning, preparation and communication will be crucial to the success of a library's return-to-work efforts. Maintaining a focus on safety and awareness of responsibilities (employee and employer) will be essential.

Some Initial Human Resources Questions & Answers

What is the FFCRA? Does it apply to my library?

The Families First Coronavirus Response Act (FFCRA) requires certain employers (this includes public employers) to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. The FFCRA is in effect from April 1, 2020 through December 31, 2020. Public sector employers are subject to the requirements.

What qualifies an employee for leave under by the FFCRA?

An employee is entitled to take leave if they are unable to work, including unable to telework, because of any of the six reasons defined by the FFCRA:

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.

After a stay-at-home order is lifted, can an employer require an employee to come back to work (assuming all safeguards are in place)?

Yes, along with this caveat: if the employer elected to pay its employees to stay home and work (or even just stay home and not work), employees are still eligible for paid leave as defined by the FFCRA. An employee may claim s/he cannot return to work due to one or more of the covered reasons and remain at home until that leave expires – then possibly be eligible for additional leave as stipulated by the regular leave policies of the employer. Employees who do not qualify for leave as defined by FFCRA OR a pre-existing employer leave policy must return to work.

Fear of returning to the workplace is not a reason that an employee is entitled to use under FFCRA leave. However, fear as a result of depression or anxiety may be covered by the Americans with Disabilities Act (ADA). As with any situation involving a potential disability, employers are urged to engage in an interactive process with an employee to determine a reasonable accommodation.

What if an employee discloses that s/he is part of a higher-risk group with underlying health conditions? What if an employee shares a residence with someone who is part of a higher-risk group? What if an employee has children, and schools (or childcare facilities) are closed and those children still

require care and supervision? What if the employee is fine, but a family member is suspected of being infected with COVID-19?

All of these are examples of some of the various ways employee situations potentially fall under the covered reasons for paid leave under FFCRA. Every employee situation should be addressed individually.

Again, there are six qualifying reasons for paid leave laid out directly by the U.S. Department of Labor. (<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>).

Must an employee disclose an underlying illness or condition in order to request leave under FFCRA?

No. The six qualifying reasons for FFCRA leave do not mandate such disclosure.

Can an employer require a “doctor’s note” or other form of documentation before granting leave under FFCRA?

NO. But be aware that health concerns are not the only qualifying reason for granting such leave. For instance, the fifth qualifying reason relates to “caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.”

In terms of health-related reasons: also NO, mostly as such permission may be impossible to obtain if a health care provider cannot be reached. Initially, self-declaration by the employee is sufficient, along with specific details around the employee’s efforts to obtain advice or establish contact with a treating health care provider.

However, an employer may request such documentation be provided during or after leave is granted.

An employee is eligible for leave because they are unable to work or telework due to one of the six covered reasons listed in the FFCRA. Now what?

The employee must provide documentation requesting leave. Here are two resources: 1) “What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?” from the Department of Labor’s site: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>; 2) “FFCRA Leave of Absence Request” Form on the Employers Council website, listed under Forms and Other Resources: <https://www.employerscouncil.org/corona-resources>

Can an employer first require that an employee fully exhaust their PTO (sick & vacation) before granting sick leave under FFCRA?

No. FFCRA-based paid leave is an additional leave entitlement on top of existing leave benefits provided by the employer. However, the employer may offer an employee the option to use paid time off (PTO) to supplement the leave.

If the state begins to re-open in a patchwork quilt fashion (a number of counties have sought exemptions to current and future statewide public health orders), how does jurisdiction work? For

instance, what if an employee works in one county but lives in another, but both don't re-open at the same rate? Does the county where the employment occurs take precedence in determining whether or not the individual is still under a stay-at-home order?

There is no clear answer or guidance as of yet to inform such situations. Telework is still strongly encouraged for employers able to offer such work arrangements. Be prepared that employees living in counties with differing public health orders will have these questions, so each situation should be handled individually but consistently.

The state of Colorado is encouraging vulnerable populations to stay home. Can the employer mandate an employee who is part of a vulnerable population to stay home?

No. This could be considered discrimination. What you can do is educate your employees and open the doors of communication with employees who have concerns. Hold everyone to the same standard – encourage employees to come forward with information to allow for an engaged, interactive discussion. Be consistent.

I Don't See My Question Here

This CLiC guide is not comprehensive. The U.S. Department of Labor offers multiple documents and comprehensive Q&A lists associated with FFCRA, such as “Covid-19 and the Fair Labor Standards Act,” and “Covid-19 and the Family & Medical Leave Act.” <https://www.dol.gov/agencies/whd/pandemic>

HR = Hardwork, Really!

It's a complicated world, and things just got more complicated. Need to bounce ideas off someone? Utilize your trusted colleagues at other libraries or CLiC. Our “Colleague on Call” service is available to talk through these things with you. <https://www.clicweb.org/>



Employers Council Resources Available to Nonmembers

The Employers Council has made a comprehensive “Coronavirus Resources” page on its website available to nonmembers as a public service. On this page, you will find a variety of helps including forms, checklists and sample language: <https://www.employerscouncil.org/corona-resources>

References used in the production of this guide

Research by CLiC staff, feedback from colleagues at Employers Council, along with the following resources:

“Families First Coronavirus Response Act: Employee Paid Leave Rights.” U.S. Department of Labor, 2020. <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

“Families First Coronavirus Response Act: Employer Paid Leave Requirements.” U.S. Department of Labor, 2020. <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

Poster: “Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave under The Families First Coronavirus Response Act (FFCRA).” U.S. Department of Labor, 2020. https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Hyman, J. “The DOL’s Families First Coronavirus Response Act regulations contain some big changes.” April 6, 2020. <https://www.workforce.com/news/the-dols-families-first-coronavirus-response-act-regulations-contain-some-big-changes>

“KNOW YOUR RIGHTS: The Families First Coronavirus Response Act Paid Leave & Paid Sick Time FAQ.” April 10, 2020. <https://www.abetterbalance.org/resources/know-your-rights-the-families-first-coronavirus-response-act-faq/>

“US Department of Labor Publishes Regulations Clarifying Various Aspects of the Families First Coronavirus Response Act (US).” April 2020. <https://www.employmentlawworldview.com/us-department-of-labor-publishes-regulations-clarifying-various-aspects-of-the-families-first-coronavirus-response-act-us/>

Grider, K. “The Families First Coronavirus Response Act: DOL Releases Updated Guidance on Telework and Intermittent Leave.” *The National Law Review*, March 2020. <https://www.natlawreview.com/article/families-first-coronavirus-response-act-dol-releases-updated-guidance-telework-and>