

FEDERAL Employment Laws Department of Labor Employee Rights under the FFCRA
POSTER COMPLIANCE DATE 04/2020

EMPLOYEE RIGHTS PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

PAID LEAVE ENTITLEMENTS
Generally, employers covered under the Act must provide employees:

- Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:
 - 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
 - 2/3 for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
 - Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

ELIGIBLE EMPLOYEES
In general, employees of private sector employers with fewer than 500 employees, and certain public sector employees, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #2 below.

QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19
An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;	3. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or
2. has been advised by a health care provider to self-quarantine related to COVID-19;	4. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
5. is caring for an individual subject to an order described in (1) or (2) and whose care is described in (2);	6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

ENFORCEMENT

FEDERAL Employment Laws POSTER COMPLIANCE DATE 04/2020

Employee Rights Under the Fair Labor Standards Act

FEDERAL MINIMUM WAGE BEGINNING JULY 24, 2009

Employee Rights Under the Family and Medical Leave Act

Job Safety and Health IT'S THE LAW!

Equal Employment Opportunity is THE LAW

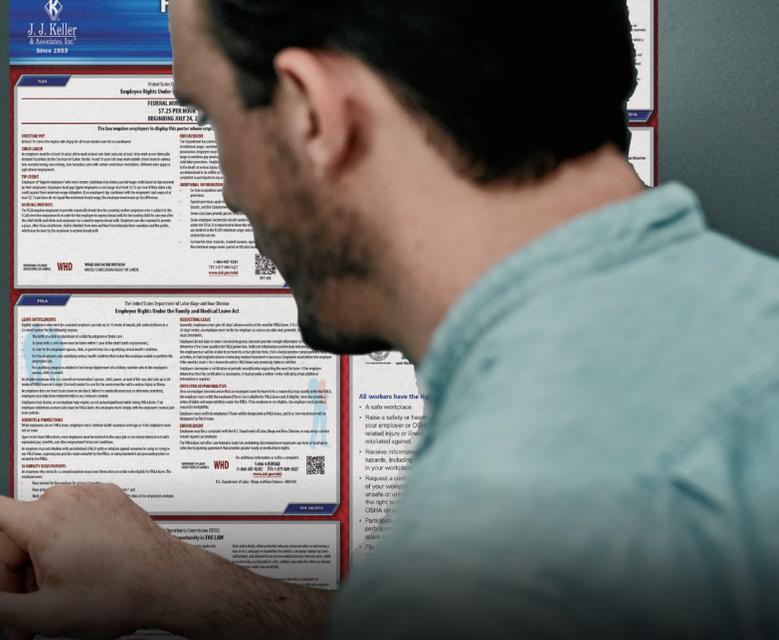
CORONAVIRUS POSTING COMPLIANCE:

New Requirements and Best Practices for Remote Employees



Trust the experts to help you manage the ongoing **CORONAVIRUS [COVID-19]** pandemic

EMPLOYEE RIGHTS UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT... FFCRA or Act requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for certain reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.



CORONAVIRUS POSTING COMPLIANCE: New Requirements and Best Practices for Remote Employees

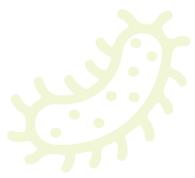
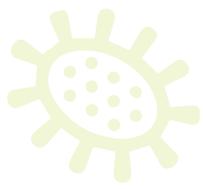
When the Families First Coronavirus Response Act (FFCRA) was signed on March 18, 2020 it brought a new federal posting requirement. The act provides employees with emergency paid sick leave, expands coverage under the Family and Medical Leave Act (FMLA), and requires covered employers to make workers aware of their rights by displaying a poster. Employers covered by the act (those with 500 or fewer employees and public agencies) need to physically display an FFCRA poster under the requirement that took effect on April 1, 2020.

The COVID-19 pandemic that drove the legislation adds new compliance challenges to this requirement. The need for social distancing is remaking the workplace and the way we communicate with employees. When it comes to labor law posters, that means thinking about the best way to make employees aware of their rights no matter where they are located. Placing a physical poster on the wall remains an obvious way to comply with a posting requirement if your employees are reporting to work at a physical location, but what happens when employees aren't in the workplace, or you're not there to make sure posters get posted?

Employers grappled with questions like this as the FFCRA federal posting requirement took effect. To explain the ins and outs of how to comply, we'll explore a number of frequently asked questions associated with this legislation. In addition, as more employees are working remotely, we'll look at best practices for communicating with your remote workers about their rights under employment laws.

THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The FFCRA requires covered employers to provide employees with leave for reasons related to COVID-19. The act provides for emergency paid sick leave as well as paid family leave. The paid sick leave portion of the legislation, called the Emergency Paid Sick Leave Act, includes a posting requirement.





WHEN COUNTING EMPLOYEES, YOU NEED TO INCLUDE:

- ✓ Employees on leave

- ✓ Temporary employees jointly employed by you and another employer

- ✓ Day laborers supplied by a temporary agency, if there is a continuing employee relationship

THERE ARE TWO VERSIONS OF THE POSTER

The Department of Labor has released two versions of the FFCRA poster.

1. Federal employers must post the poster called Federal Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave Under the Families First Coronavirus Response Act.
2. Other covered employers must post Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave Under the Families First Coronavirus Response Act.

WHEN DOES AN FFCRA POSTER NEED TO BE POSTED?

The FFCRA posting requirement took effect on April 1, 2020, the day the law went into effect.

WHO NEEDS TO DISPLAY THIS POSTER?

Employers with fewer than 500 employees and public agencies must post an FFCRA poster.

WHAT IS A PUBLIC AGENCY?

Public agencies include federal agencies, state agencies, the U.S. Postal Service, and public schools.

HOW DO I KNOW IF I HAVE FEWER THAN 500 EMPLOYEES?

The FFCRA poster needs to be posted by employers with fewer than 500 employees. According to the Department of Labor (DOL), you have fewer than 500 employees if you employ fewer than 500 full-time and part-time employees in the United States. This includes employees in:

- Any state
- The District of Columbia
- Any territory of the United States
- Any possession of the United States

You have fewer than 500 employees if you employ fewer than 500 full-time and part-time employees in the U.S.



I HAVE A TEMPORARY EMPLOYEE WHO IS JOINTLY EMPLOYED BY OUR COMPANY AND ANOTHER EMPLOYER. THE EMPLOYEE IS MAINTAINED ONLY ON THE PAYROLL OF THE OTHER EMPLOYER. DO I COUNT THAT EMPLOYEE FOR PURPOSES OF THE 500-EMPLOYEE THRESHOLD?

Yes. According to the DOL, a temporary employee who is jointly employed by you and another employer is counted regardless of whether the employee is maintained on only your payroll or the other employer's payroll.

I EMPLOY A DAY LABORER WHO IS SUPPLIED BY A TEMPORARY AGENCY. DO I COUNT THAT EMPLOYEE?

Yes, if there is a continuing employee relationship. A day laborer supplied by a temporary agency is counted regardless of whether you are the temporary agency or client firm if there is a continuing employment relationship.

DO I COUNT INDEPENDENT CONTRACTORS?

No. Workers who are independent contractors under the Fair Labor Standards Act (FLSA) are not counted for purposes of the 500-employee threshold.

ARE CORPORATIONS, INCLUDING SEPARATE ESTABLISHMENTS OR DIVISIONS, A SINGLE EMPLOYER FOR PURPOSES OF THE 500-EMPLOYEE THRESHOLD?

Yes, typically a corporation along with its separate establishments and divisions is a single employer, and its employees must each be counted toward the 500-employee threshold. An employer with more than 500 employees does not need to display the FFCRA poster.

WHAT HAPPENS WHEN ONE CORPORATION HAS AN OWNERSHIP INTEREST IN ANOTHER CORPORATION?

In that situation, they are separate employers unless they are joint employers under the FLSA. If they are joint employers under the FLSA, then all their common employees must be counted. The FFCRA (and its posting requirement) would apply if an entity has fewer than 500 employees.

If two companies are joint employers, then all their common employees must be counted.

HOW DO I KNOW WHETHER OR NOT I AM A JOINT EMPLOYER UNDER THE FLSA?

Under the FLSA, a joint employer is an additional entity that is jointly liable with the employer for the employee's wages. When considering whether or not an entity is a joint employer, consider whether the potential joint employer:

- Hires or fires the employee;
- Supervises and controls the employee's work schedule or conditions of employment to a substantial degree;
- Determines the employee's rate and method of payment; and
- Maintains the employee's employment records.

Whether a company is a joint employer will depend on all the facts in a particular case, and circumstances will dictate how much weight is given to a particular factor. However, the DOL notes that maintaining employment records alone does not make a company a joint employer.

If you and another company are joint employers under the FLSA, then all common employees must be counted. The FFCRA (and its posting requirement) would apply if you have fewer than 500 employees.



MEETING THE 500-EMPLOYEE THRESHOLD: THE INTEGRATED EMPLOYER TEST UNDER THE FMLA

The FFCRA provides for both emergency paid sick leave and expanded FMLA coverage. The posting requirement and paid sick leave requirements are found in the Emergency Paid Sick Leave Act portion of the law, while expanded FMLA coverage is in a part of the legislation called the Emergency Family and Medical Leave Expansion Act.

When explaining which employers are covered by the FFCRA, the DOL also points to the FMLA's integrated employer test.

It notes that separate entities that meet the FMLA integrated employer test count employees of all entities when determining employer coverage. Factors to consider include:

- Common management,
- Interrelation between operations,
- Centralized control of labor relations, and
- Degree of common ownership or financial control.

DOES THIS ACT APPLY TO PRIVATE EMPLOYERS WITH MORE THAN 500 EMPLOYEES?

No. The FFCRA only applies to private sector employers with fewer than 500 employees.

IS THERE AN EXEMPTION FOR EMPLOYERS WITH FEWER THAN 50 EMPLOYEES?

There is no exemption from the posting requirement for employers with fewer than 50 employees. The DOL notes that small businesses with fewer than 50 employees may qualify for an exemption from some of the law's requirements under certain circumstances. The exemption for these employers relates to the part of the law requiring employers to provide leave due to school closings or lack of childcare availability. However, the law does not exempt any covered employer from the posting requirements, so an employer with 50 or fewer employees would still need to display the poster.

DOES A PHYSICAL POSTER NEED TO BE POSTED?

Yes. The law calls for employers to post the notice in conspicuous places on their premises.

SINCE MOST OF MY WORKFORCE IS TELEWORKING, WHERE DO I ELECTRONICALLY "POST" THIS NOTICE?

In its Frequently Asked Questions about the FFCRA poster, the DOL says that: "Each covered employer must post a notice of the Families First Coronavirus Response Act (FFCRA) requirements in a conspicuous place on its premises. An employer may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website."

DOES THIS POSTER NEED TO BE A CERTAIN SIZE?

No. The law does not include any size requirements for this poster. The poster does need to be conspicuously posted, however. It should not be reduced to a size that is too small to read.

DOES THIS POSTER NEED TO BE DISPLAYED IN SPANISH OR ANOTHER LANGUAGE?

There is no requirement to post this in language other than English. If you have workers who are literate in a language other than English, it is always a good idea to display a poster in the language your employees speak. This makes all workers aware of their rights under the law.

DO I HAVE TO SHARE THIS NOTICE WITH RECENTLY LAID-OFF INDIVIDUALS?

No, DOL notes that the FFCRA requirements explained on this notice apply only to current employees.

DO I HAVE TO SHARE THIS NOTICE WITH NEW JOB APPLICANTS?

No, the DOL explains that the FFCRA requirements apply only to current employees. Employers are under no obligation to provide the notice of those requirements to prospective employees.

DO I HAVE TO GIVE NOTICE OF THE FFCRA REQUIREMENTS TO NEW HIRES?

Yes. The DOL states that if you hire a job applicant, you must convey this notice to them, either by email, direct mail, or by posting this notice on the premises or on an employee information internal or external website.



PHYSICAL POSTERS
must be posted in
conspicuous places on
your premises.

IF MY STATE PROVIDES GREATER PROTECTIONS THAN THE FFCRA, DO I STILL HAVE TO POST THIS NOTICE?

According to the DOL, all covered employers must post this notice regardless of whether their state requires greater protections. The employer must comply with both federal and state law.

HOW LONG DOES THE FFCRA POSTER NEED TO BE DISPLAYED?

The FFCRA poster needs to be posted through December 31, 2020.

POSTING FOR REMOTE EMPLOYEES

The FFCRA poster is the latest posting requirement that employers need to consider. However, the FFCRA poster is far from the only poster that employers need to display. Employers need to display all required employment law posters called for in federal, state, and local laws.

WHERE DO POSTING REQUIREMENTS COME FROM?

The requirement to display a labor law poster is found in hundreds of state, federal, and local laws. There is no single over-arching law that requires businesses to display labor law posters. Rather, many laws contain a section that calls for a poster to be displayed. In fact, there are more than 350 laws nationwide with a posting requirement.

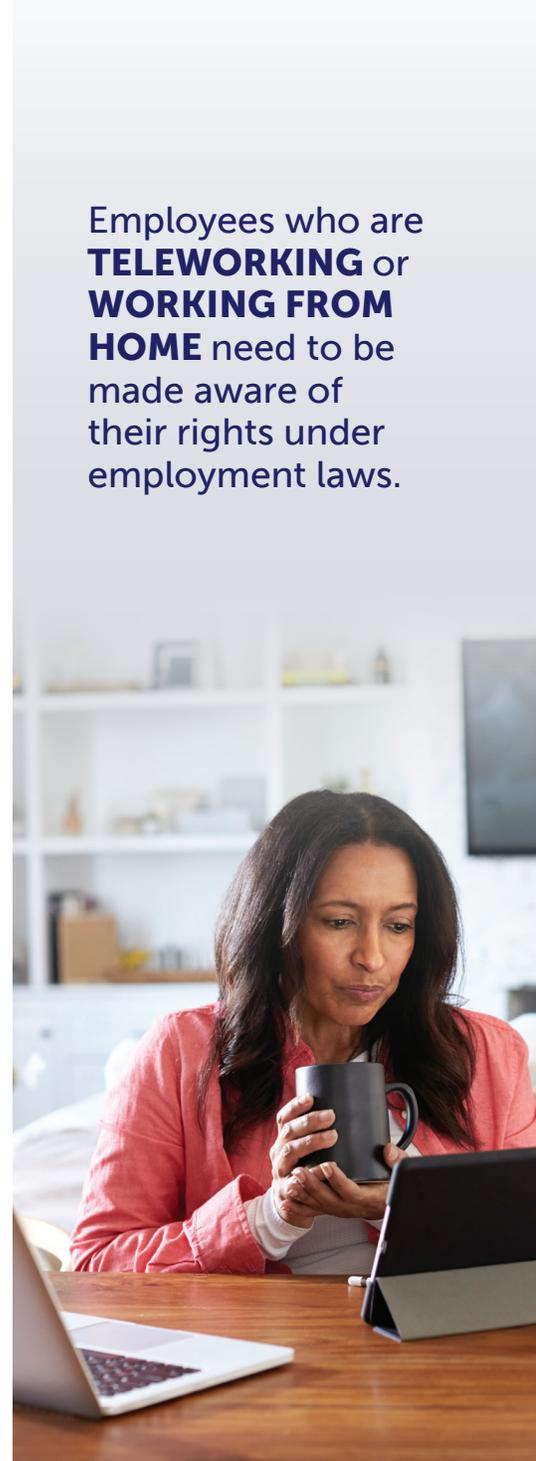
When a law includes a posting requirement, the poster must be displayed by an employer covered by that law. A "covered employer" might be a business in a certain state or city, or a company that is in a specific industry. It might be every business that has at least one employee, or a company that has 15 or 50 employees. Under the FFCRA, a covered employer is a business with 500 or fewer employees or a public agency.

HOW CAN I COMPLY?

Meeting posting requirements is fairly easy when all employees are reporting to your office. In that case, posters need to be displayed in an area where they're easily seen by employees. This might be in a break room, near an entrance, or next to a time clock.

However, when employees are teleworking or working from home, they don't have the opportunity to see these physical posters each day. Yet they should to be made aware of their rights under employment laws. Not providing them with that information can increase the risk of a lawsuit or fine. In addition, making the effort to provide that information via an electronic poster or another method could be beneficial if an employee later claims that you didn't provide the correct information. Making compliant posters available is a way to show that you have made a good faith effort to make employees aware of their rights.

Employees who are **TELEWORKING** or **WORKING FROM HOME** need to be made aware of their rights under employment laws.



ELECTRONIC POSTING

One option for making remote workers aware of their rights is through electronic posting. Employment law posters could be made available to your remote employees through a link on your company's intranet.

Most laws were written before electronic posting was an option, and a physical piece of paper was the only way to post notices for employees. However, a few of the newer laws do mention ways to make workers aware of their rights in a manner other than through posting:

- **USERRA:** Information about the Uniformed Services Employment and Reemployment Rights Act (USERRA) can be posted or distributed in other ways, such as via email.
- **FMLA:** Electronic posting can be used for the Family and Medical Leave Act (FMLA) poster as long as all other posting requirements are met. (The notice must be posted prominently where it can be readily seen by employees and applicants for employment. The poster and the text must be large enough to be easily read and contain fully legible text.)

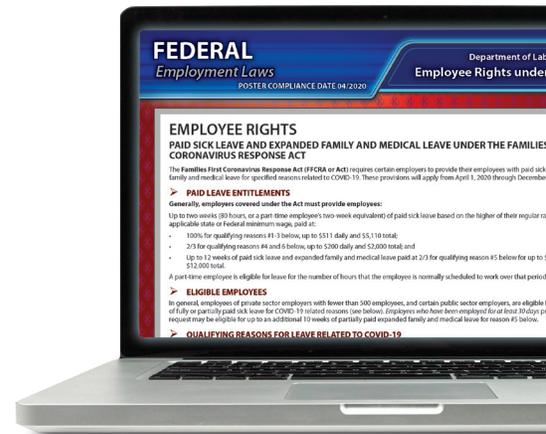
In addition, the Equal Employment Opportunity Commission (EEOC) mentions electronic posting on its website. The EEOC is in charge of the Equal Employment Opportunity is the Law poster, which lists a summary of anti-discrimination rights. The agency states that:

"... for employees who telework and do not visit the employer's workplace on a regular basis, electronic posting may be required in addition to physical posting."

The EEOC makes it clear that electronic posting is not a substitute for displaying the physical posters at locations where employees come into the office to work. However, if an employee is working from home, and doesn't regularly visit the office, electronic posting may be necessary. This is some good, practical guidance.

BEST PRACTICES FOR POSTING FOR YOUR REMOTE EMPLOYEES

When it comes to making remote workers aware of their rights under underemployment laws, you do have the option of sending them their own set of posters or emailing posters to them. If you don't think they'd post paper posters, or if emailing the posters is cumbersome, electronic posting is a good alternative.



Employment law posters could be made available to your **REMOTE EMPLOYEES** through a link on your company's intranet.

AN EMPLOYER NEEDS TO MAKE THREE POSTERS VISIBLE TO APPLICANTS:

- ✓ The FMLA poster
- ✓ The EEO is the Law poster
- ✓ The Employee Polygraph Protection Act poster

Many posting requirements call for posters to be conspicuously displayed. When posting electronically it is a good idea to:

- Place the posting link in a visible area on your intranet and
- Make sure employees know how to access it.

WHAT ABOUT POSTING FOR APPLICANTS?

An employer needs to make three posters visible to applicants:

- The FMLA poster
- The EEO is the Law poster
- The Employee Polygraph Protection Act poster

When people visit your workplace for an interview, an employer can comply with this requirement by displaying the posters in an area where the applicant will see them when coming in for an interview.

If no applicants are interviewed in person, the DOL suggests that an employer place a prominent notice on the website where job postings are listed stating that “Applicants have rights under Federal Employment Laws.” It should link to the three posters mentioned above.

An employer must post the physical posters at the worksite, even if it makes the electronic postings available for those who apply online.

CONCLUSION

During a time of rapid change and concern in the workplace, we’re faced with new challenges each day. When work routines are altered, and physically placing an employment law poster on the wall is not practical, electronic posting is a good way to make employees aware of their rights under the law.

The new posting required by the FFCRA makes employees aware of important new emergency paid leave rights. This law, and posting, come at a critical time. Knowing that paid leave is available may help ease anxiety among your workforce. In addition, it may help employees who are reporting to a worksite understand the importance of not coming in when they are ill. This helps stop the spread of COVID-19 and keeps others safe.

The FFCRA posting is the latest federal law to include a posting requirement, but it’s far from the only labor law poster employers need to have on the wall. Federal, state, and local laws include posting requirements because posting is an effective way to give workers important information about many workplace rights. Physically posting employment law posters allows an employer to share vital information and comply with posting requirements. Posting labor law posters electronically as well gives employees another way to access information when they need it, wherever they are reporting to work.

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Terri joined the J. J. Keller team in 2011 and is an editor on the human resources publishing team. Her primary areas of focus are labor law posters, drug testing, marijuana legislation, and employee wellness.

She stays on top of employment law poster updates and makes sure J. J. Keller's labor law poster content is complaint. She also watches for changes to drug testing and marijuana laws and is co-editor of the Everyday Drug & Alcohol Program Management manual. In addition, Terri provides healthy living tips and wellness best practices in the Employee Health and Wellness Training Advisor/LivingRight.

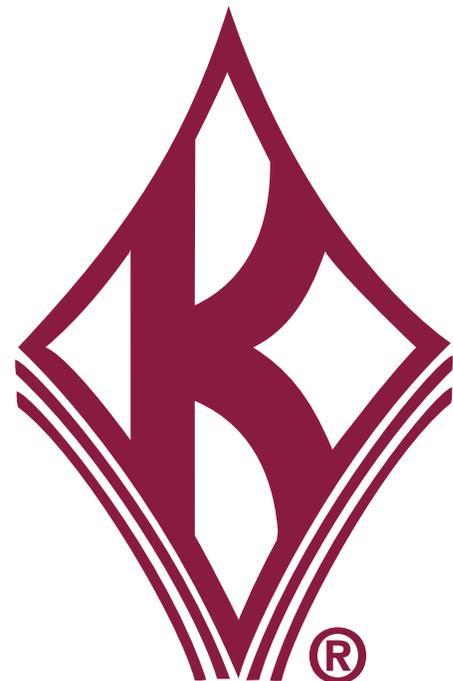


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