



TO: Conferences of the United Church of Christ  
FROM: Office of General Counsel  
DATE: March 19, 2020  
RE: Families First Coronavirus Response Act

## MEMORANDUM

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The Families First Coronavirus Response Act (FFCRA) was signed into law by the President on March 18, 2020. It expands the provisions of the Family and Medical Leave Act (FMLA), including which employers are covered under the Act, **which may bring smaller religious organizations like Local Churches and Conferences under the new provisions.**<sup>1</sup> The FFCRA expands FMLA to allow for an employee's **paid leave** in the event that a child's school or daycare is closed due to a public health emergency with respect to COVID-19. It also adds a Paid Sick Leave obligation. This memorandum summarizes the new provisions that are most applicable to the United Church of Christ National Setting and covenant partners. This is a

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<sup>1</sup> FFCRA did not affect the requirement that a covered employer be engaged in "engaged in commerce or in an industry or activity affecting commerce" to be covered under the FMLA. The Code of Federal Regulations deems any employer with 50 or more employees to be engaged in commerce. 29 CFR part 825.104. Whether a Local Church or Conference with fewer than 50 employees is engaged in commerce is a determination to be made on all of the particular facts and circumstances of the organization. For example, it may be more likely that a Local Church or Conference is engaged in commerce if it has a camp, a daycare or preschool, sells products to persons in other states, operates an unrelated trade or business, or broadcasts its services.

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developing situation and this memorandum is subject to change and/or be updated as more information becomes available. Note that these provisions are only applicable with respect to circumstances arising out of the COVID-19 pandemic.

### **Effective Date**

The FFCRA is effective April 2, 2020 and expires December 31, 2020.

### **Covered Employers**

Both the FMLA and the Paid Sick Leave provisions apply to private employers (including nonprofit religious organizations) with fewer than 500 employees, including those with fewer than 50 employees. (Note that the U.S. Dept. of Labor may issue regulations that exempt businesses with fewer than 50 employees from certain provisions when the provision jeopardizes the viability of the business.) This means that Local Churches and Conferences may be covered if they have lay employees and are engaged in commerce (see Covered Employees, below).

### **Covered Employees**

The FMLA paid leave provisions cover employees who have been employed at least 30 calendar days. The usual FMLA requirements that the employee be employed for a year, work at least 1250 hours, and work in a location with 50 employees within a 75-mile radius do not apply. The Paid Sick Leave provisions apply to all employees of covered employers. Note that under the ministerial exception, employees who are ministers may be exempt from these laws. Also note that there is no prohibition on providing a policy with similar provisions for ministers, and settings of the United Church of Christ may wish to do so.

### **FMLA Paid Leave Provision**

If an employee is unable to work, including unable to work remotely, because the employee's child's school or daycare is closed due to a public health emergency with respect to COVID-19, that employee is entitled to up to 12 weeks of **paid leave**.

The employer can provide the first 10 days of leave unpaid. Subsequent absences must be paid at 2/3 of the employee's regular rate of pay. The pay is capped at \$200 per day, and \$10,000 over the 12 weeks. An employee may elect, but may not be forced, to use sick leave, vacation, or personal time to cover the initial 10 days. This includes the sick leave available to the employee under the Paid Sick Leave provisions described below, which will enable the employee to effectively have 12 weeks of paid leave, under two separate provisions of the FFCRA. Note that an employer is not prohibited from exceeding the rate of pay per diem or in the aggregate. Many settings of the United Church of Christ may choose to maintain an employee's regular pay if FMLA leave is taken for this purpose.

### **Paid Sick Leave Provision**

Employers with fewer than 500 employees must immediately make available 80 hours of paid sick leave for full-time employees (or the equivalent of the average number of hours over two weeks for part-time employees) for the following reasons:

- Employee has been directed or ordered to quarantine or isolate related to COVID-19 by the federal, state, or local authorities.
- Employee has been advised by a healthcare provider to self-quarantine because of COVID-19.
- Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- Employee is caring for an individual that is subject to a directive or order as described in the first two bullet points. Note that the individual need not be related to the employee.
- Employee is caring for their child because the child's school or daycare has been closed because of COVID-19.
- Employee is experiencing any other substantially similar condition (to be specified by the Secretary of Health and Human Services).

When the reason for the leave is due to caring for another individual; the closure of a child's school or daycare; or experiencing a substantially similar condition, the leave is to be paid at 2/3 regular pay, cap of \$200/day and \$2000 in the aggregate. Otherwise, the leave is paid at the employee's regular rate, and is capped at \$511/day and \$5110 in the aggregate. Note that an employer is not prohibited from exceeding the rate of pay per diem or in the aggregate. Many settings of the United Church of Christ may choose to maintain an employee's regular pay if paid sick leave is taken for this purpose.

### **Effect on Employer's Current Policies**

An employer may not require an employee to use other paid leave provided by the employer before the employer uses FMLA or paid sick leave under FFCRA. The paid sick leave provided is in addition to any other sick leave provided by the employer.

### **Notice**

For FMLA paid leave, the employee must notify the employer that the employee is taking leave "as is practicable."

For paid sick leave, an employer may require the employee to follow reasonable notice procedures after the first workday that the employee receives paid sick leave to continue to receive the leave.

### **Job Protection**

Employers are required to return employees to their positions at the end of the leave. Employers with fewer than 25 employees may be exempt if employee's position no longer exists due to economic or operating conditions due to the COVID-19 health emergency and the employer makes reasonable efforts to restore the employee to an equivalent position with equivalent pay, benefits, and employment terms/conditions for a one-year period following the end of the leave.