



## INDUSTRIAL COMMISSION OF ARIZONA

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## FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT COVID-19 AND EARNED PAID SICK TIME (REV. SEPT. 15, 2020)

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For the latest information regarding the Arizona's response to COVID-19, please visit the [Arizona Department of Health Services](#).

For further information about the Families First Coronavirus Response Act, please visit the [U.S. Department of Labor, Wage and Hour Division](#).

Proposition 206, the Fair Wages and Healthy Families Act, gives the Industrial Commission of Arizona authority to enforce and implement the Fair Wages and Healthy Families Act's earned paid sick time requirements. The following information is derived from the language of the Act and current administrative rules found in Title 20, Chapter 5, Article 12 of the Arizona Administrative Code. Additional FAQs related to earned paid sick time are available at <https://www.azica.gov/divisions/labor-department>.

***Please note that nothing in Arizona's earned paid sick time laws, rules, or these FAQs should be construed to discourage or prohibit an employer from adopting an earned paid sick time policy that is more generous than that required by the Fair Wages and Healthy Families Act. Consistent with [recommendations](#) from the U.S. Centers for Disease Control and Prevention, employers are encouraged to maintain flexible sick leave policies that are consistent with public health guidance and ensure that employees are aware of these policies.***

**NOTE:** Where appropriate, the phrase "earned paid sick time" in these FAQs means both earned paid sick time and "equivalent paid time off."

\*All information provided herein is for informational purposes only and is not intended as legal advice. This information should not be used as a replacement for the Fair Wages and Healthy Families Act or the advice of qualified legal counsel.

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## Earned Paid Sick Time

### What is earned paid sick time?

Earned paid sick time is leave time that is paid at the same hourly rate and with the same benefits, including health care benefits, that an employee would have received for the work hours during which earned paid sick time is used.

### When can I use accrued earned paid sick time?

Employees may use accrued earned paid sick time in the following circumstances:

- Mental or physical illness, injury, or health condition of the employee or any of the employee's family members. *See also* [Who qualifies as a "family member" within the meaning of the Fair Wages and Healthy Families Act?](#)
- Medical diagnosis, treatment, or care (including preventative medical care) associated with a mental or physical illness, injury, or health condition of the employee or any of the employee's family members.
- Closure of the employee's place of business by order of a public official due to a public health emergency.
- Employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency.
- Care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease.
- An absence due to domestic violence, sexual violence, abuse, or stalking involving the employee or any of the employee's family members.

*See* [Arizona Revised Statutes § 23-373](#) for further detail concerning authorized uses for earned paid sick time. *See also* [Who qualifies as a "family member" within the meaning of the Fair Wages and Healthy Families Act?](#)

### Who qualifies as a "family member" within the meaning of the Fair Wages and Healthy Families Act?

A "family member" includes the following:

- Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands in loco parentis, or an individual to whom the employee stood in loco parentis when the individual was a minor;

- A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee or employee's spouse or domestic partner was a minor child;
- A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee as registered under the laws of any state or political subdivision;
- A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner; or
- Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

See [Arizona Revised Statutes § 23-371\(H\)](#).

### What is a “public health emergency” within the meaning of the Fair Wages and Healthy Families Act?

A “public health emergency” means a state of emergency declared by the governor in which there is an occurrence or imminent threat of an illness or health condition caused by bioterrorism, an epidemic or pandemic disease or a highly fatal infectious agent or biological toxin and that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. See [A.A.C. R20-5-1202\(24\)](#).

### Has Governor Doug Ducey declared a “public health emergency” related to COVID-19?

Yes. Governor Ducey issued a [Declaration of Emergency and an Executive Order](#) on March 11, 2020 related to COVID-19. The Declaration of Emergency and Executive Order were issued to provide health officials and administrators with tools and guidance necessary to combat the continued spread of COVID-19 and to reduce financial burdens on Arizonans by lowering healthcare costs associated with the virus.

### Can I use accrued earned paid sick time if I contract, or a family member contracts, COVID-19?

Yes, subject to applicable usage limitations. For more information about accrual and usage limitations under the Fair Wages and Healthy Families Act, see [How much earned paid sick time must an employer offer an employee?](#)

### Can I use accrued earned paid sick time if I need to be tested, or a family member needs to be tested, for COVID-19?

Yes, subject to applicable usage limitations. For more information about accrual and usage limitations under the Fair Wages and Healthy Families Act, see [How much earned paid sick time must an employer offer an employee?](#)

Can I use accrued earned paid sick time if my place of business is closed due to the spread of COVID-19?

Yes, if the place of business was closed by order of a public official due to the COVID-19 public health emergency or if the employer allows such a practice. See [May an employer offer more generous earned paid sick time policies than those required by the Fair Wages and Healthy Families Act?](#) Usage of earned paid sick time is subject to applicable usage limitations. For more information about accrual and usage limitations under the Fair Wages and Healthy Families Act, see [How much earned paid sick time must an employer offer an employee?](#)

Can I use accrued earned paid sick time to care for a child whose school has been closed due to COVID-19?

Yes, if the school has been closed by order of a public official due to a public health emergency or if the employer allows such a practice. See [May an employer offer more generous earned paid sick time policies than those required by the Fair Wages and Healthy Families Act?](#) Usage of earned paid sick time is subject to applicable usage limitations. For more information about accrual and usage limitations under the Fair Wages and Healthy Families Act, see [How much earned paid sick time must an employer offer an employee?](#)

Can I use accrued earned paid sick time if I am quarantined or need to care for a family member who has been quarantined due to a potential exposure to COVID-19?

Yes, if the employer allows such a practice (see [May an employer offer more generous earned paid sick time policies than those required by the Fair Wages and Healthy Families Act?](#)) or if it has been determined by the health authorities having jurisdiction, or by a health care provider, that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to COVID-19 – whether or not the employee or family member has actually contracted COVID-19. Usage of earned paid sick time is subject to applicable usage limitations. For more information about accrual and usage limitations under the Fair Wages and Healthy Families Act, see [How much earned paid sick time must an employer offer an employee?](#)

How much earned paid sick time must an employer offer an employee?

**For employers with 15 or more employees:** Employees are entitled to accrue one hour of earned paid sick time for every 30 hours worked, but employees are not entitled to accrue or use more than 40 hours of earned paid sick time per year, unless the employer selects a higher limit.

**For employers with fewer than 15 employees:** Employees are entitled to accrue one hour of earned paid sick time for every 30 hours worked, but they are not entitled to accrue or use more than 24 hours of earned paid sick time per year, unless the employer sets a higher limit.

How soon can an employee begin using earned paid sick time?

An employee may use earned paid sick time as it is accrued or otherwise available for use. An employer may require an employee hired after July 1, 2017, to wait 90 calendar days after the start of employment before using accrued earned paid sick time. However, the Fair Wages and Healthy Families Act does not prevent an employer from waiving with the 90-day waiting period.

## What if I use all of my accrued earned paid sick time and I need additional leave time?

The Fair Wages and Healthy Families Act establishes the minimum requirements associated with earned paid sick time. Employers However, nothing in Arizona's earned paid sick time laws, rules, or these FAQs should be construed to discourage or prohibit an employer from adopting an earned paid sick time policy that is more generous than that required by the Fair Wages and Healthy Families Act. Additionally, the provisions of the Fair Wages and Healthy Families Act do not diminish an employer's obligation to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement that provides more generous paid sick time to an employee than that required by the Fair Wages and Healthy Families Act.

Consistent with [recommendations](#) from the U.S. Centers for Disease Control and Prevention, employers are encouraged to maintain flexible sick leave policies that are consistent with public health guidance and ensure that employees are aware of these policies. In the event an employee exhausts accrued earned paid sick time due to circumstances associated with COVID-19, employees and employers are encouraged to discuss voluntary leave policies that are consistent with public health guidance and that meet the needs of Arizona's employers and employees. For more information, see [May an employer offer more generous earned paid sick time policies than those required by the Fair Wages and Healthy Families Act?](#)

## Can an employer donate or loan earned paid sick time to an employee?

Yes, subject to the employer's allowance of such practices. For more information, see [May an employer offer more generous earned paid sick time policies than those required by the Fair Wages and Healthy Families Act?](#)

## May an employer offer more generous earned paid sick time policies than those required by the Fair Wages and Healthy Families Act?

Yes. Pursuant to Arizona Revised Statutes § 23-378, nothing in Arizona's earned paid sick time laws should be construed to discourage or prohibit an employer from adopting an earned paid sick time policy that is more generous than that required by the Fair Wages and Healthy Families Act. Additionally, the provisions of the Fair Wages and Healthy Families Act do not diminish an employer's obligation to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement that provides more generous paid sick time to an employee than that required by the Fair Wages and Healthy Families Act.

Consistent with [recommendations](#) from the Centers for Disease Control and Prevention, employers are encouraged to maintain flexible sick leave policies that are consistent with public health guidance and ensure that employees are aware of these policies. Specifically, employers are encouraged to maintain flexible policies that permit employees to stay home if they contract COVID-19 or to care for a sick family member.

## How does an employee request earned paid sick time?

Pursuant to [A.R.S. § 23-373\(B\)](#), a request to use earned paid sick time may be made orally, in writing, by electronic means, or by any other means acceptable to the employer. When possible, the request to use earned paid sick time must include the expected duration of the absence. Employers are encouraged to be flexible with earned paid sick time requests related to COVID-19.

When leave is not foreseeable, an employer may require an employee to follow a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy

of its written policy for providing such notice may not deny earned paid sick time to the employee based on non-compliance with such a policy.

**Can an employer require that an employee seeking to use earned paid sick time search for or find a replacement worker to cover the employee's absence?**

No.

**Can an employer require employees to provide reasonable documentation for absences in which earned paid sick time is used?**

Yes, but only if an employee uses earned paid sick time on three or more consecutive work days. Consistent with [recommendations](#) from the U.S. Centers for Disease Control and Prevention, employers are encouraged not to require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide documentation in a timely way.

## **Violations of the Fair Wages and Healthy Families Act**

**What if an employer is not adhering to minimum earned paid sick time requirements?**

Employees who believe that their employer is violating the Fair Wages and Healthy Families Act may file a complaint with the Labor Department of the Industrial Commission or file a civil lawsuit. To file a complaint online concerning underpayment of earned paid sick time, click [here](#). To file a claim in writing, send the completed claim form to:

Industrial Commission of Arizona  
Labor Department  
800 W Washington St.  
Phoenix, AZ 85007

**When must an administrative complaint be filed?**

An administrative complaint concerning a minimum wage or earned paid sick time violation must be filed within one year of the date the wages were due. In addition, claims for retaliation, discrimination, or a violation of A.R.S. § 23-377 must be filed with the Labor Department of the Industrial Commission within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation. See A.A.C. R20-5-1211.

**Can an employer retaliate against an employee for asserting any rights related to earned paid sick time?**

No. The Fair Wages and Healthy Families Act prohibits an employer from discriminating or retaliating against an employee or other person for asserting any right under the Fair Wages and Healthy Families Act. Additionally, if an employer takes an adverse action against an employee within 90 days of the employee asserting a right under the Fair Wages and Healthy Families Act, retaliated against the employee will be presumed. This presumption can be overcome if the employer shows by clear and convincing evidence that the action taken against the employee was for a permissible reason.

Employees who believe that their employer is violating the Fair Wages and Healthy Families Act may file a retaliation complaint with the Labor Department of the Industrial Commission or file a civil lawsuit. To file a complaint online concerning earned paid sick time retaliation, click [here](#). To file a claim in writing, send the completed claim form to:

Industrial Commission of Arizona  
Labor Department  
800 W Washington St.  
Phoenix, AZ 85007

### What is an “adverse action” within the meaning of the Fair Wages and Healthy Families Act?

The Fair Wages and Healthy Families Act does not define “adverse action.” Absent additional legislative or judicial guidance, the Industrial Commission will defer to established case law when determining whether an employee has been subjected to an adverse action.

## Families First Coronavirus Response Act

### What is the Families First Coronavirus Response Act?

On March 18, 2020, President Donald J. Trump signed the [Families First Coronavirus Response Act](#) (“FFCRA”) into law. The FFCRA requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The [United States Department of Labor’s Wage and Hour Division](#) administers and enforces the FFCRA’s paid leave requirements. The new leave provisions are applicable from April 1, 2020, through December 31, 2020.

### What are the new leave requirements in the Families First Coronavirus Response Act?

Generally, the FFCRA provides that employees of covered employers are eligible for:

- Two weeks (up to 80 hours) of paid sick leave at the employee’s regular rate of pay where the employee is unable to work (or telework) because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee’s regular rate of pay because the employee is unable to work (or telework) because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the U.S. Secretary of Health and Human Services, in consultation with the U.S. Secretaries of the Treasury and Labor; and
- Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee’s regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

**Covered Employers:** The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees. Small



businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

**Eligible Employees:** All employees of covered employers are eligible for two weeks of paid sick time for specified reasons related to COVID-19. Employees employed for at least 30 days are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19.

**Qualifying Reasons for Leave:**

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or telework) because the employee:

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 U.S. Secretary of Health and Human Services, in consultation with the U.S. Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee 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.

**Duration of Leave:**

For reasons (1)-(4) and (6): A full-time employee is eligible for 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

For reason (5): A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical leave) at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

**Calculation of Pay:**

For leave reasons (1), (2), or (3): employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

For leave reasons (4) or (6): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

For leave reason (5): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period).

**Does the Industrial Commission of Arizona oversee or enforce the paid leave provisions in the Families First Coronavirus Response Act?**

No. Because the [Families First Coronavirus Response Act](#) was enacted by the United States Congress and signed by President Donald J. Trump, the law is administered and enforced at a federal level by the [United States Department of Labor, Wage and Hour Division](#).

**What if I have questions about the Families First Coronavirus Response Act?**

The statutory language of the Families First Coronavirus Response Act (“FFCRA”) is available [here](#). Questions related to the paid leave provisions of the Families First Coronavirus Response Act may be directed to the [United States Department of Labor, Wage and Hour Division](#). The U.S. Department of Labor, Wage and Hour Division has published various FFCRA resources [here](#), including Fact Sheets for Employees and Employers, Posters, and various Question and Answer documents – which address critical questions such as how an employer must count the number of their employees to determine coverage; how small businesses can obtain an exemption; how to count hours for part-time employees; and how to calculate the wages employees are entitled to under the FFCRA.

**What if I already have accrued earned paid sick time under the Arizona Fair Wages and Healthy Families Act? Do I have to use my Arizona earned paid sick time before I use the paid sick leave provided by the Families First Coronavirus Response Act?**

The paid sick leave provisions of the [Families First Coronavirus Response Act](#) are ***in addition to*** any sick leave that is already offered by employers, including earned paid sick time under Arizona’s Fair Wages and Healthy Families Act. Employers are not permitted to require an employee to use other paid leave provided to an employee, including Arizona earned paid sick time, before the employee uses paid sick leave under the Families First Coronavirus Response Act.