



BROWN FOX

ADA and FMLA

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Covered Employers

- Private employers with 50 or more employees

FMLA

Frances Perkins Building

ADA

- Private employers with 15 or more employees

United States
Department
of Labor

Families First Corona Virus Response Act Coverage



Employers of 500 or fewer
employees

Eligible Employees



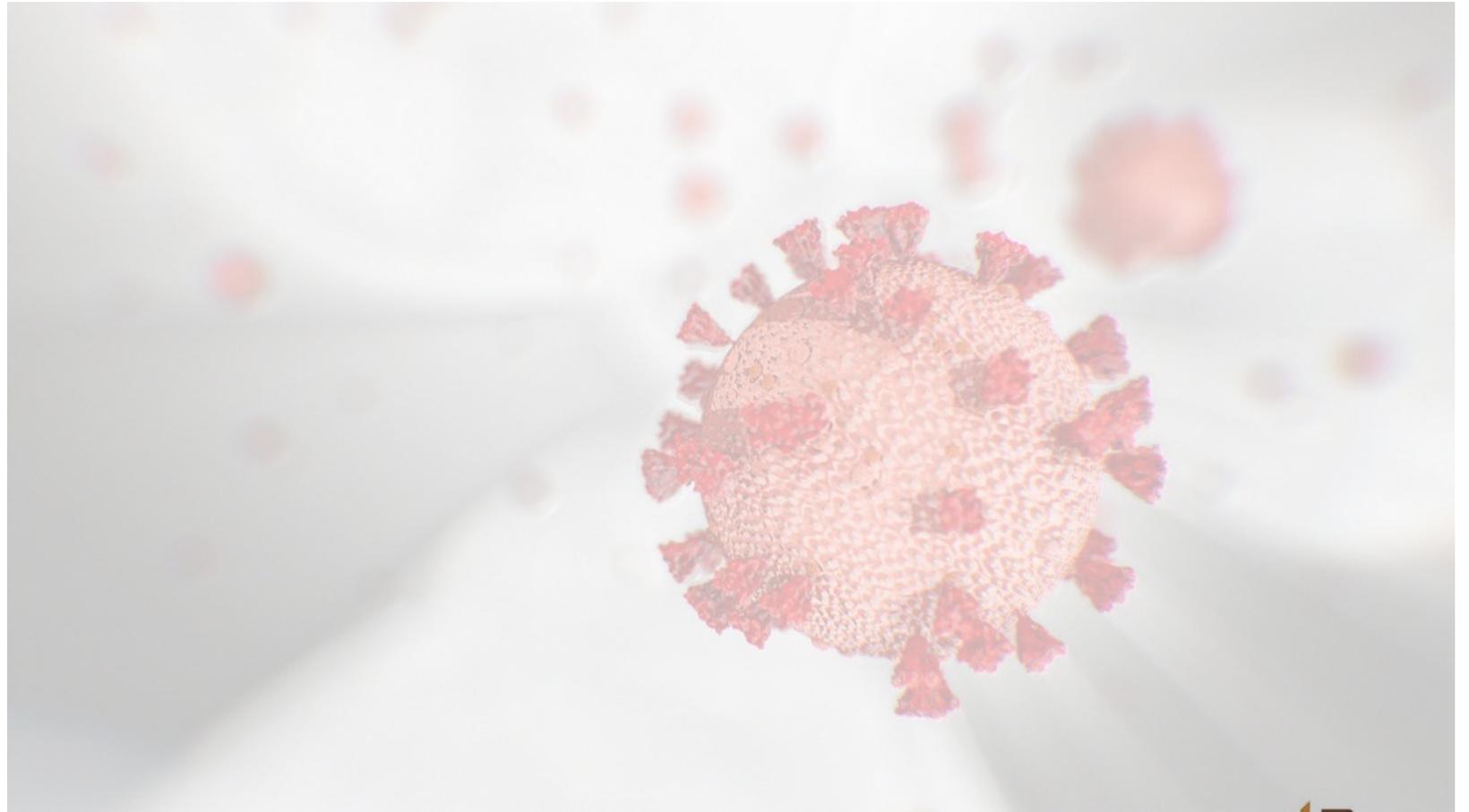
An employee must have worked for a covered employer for at least 12 months



There is no minimum length of employment

Eligibility under the FFCRA

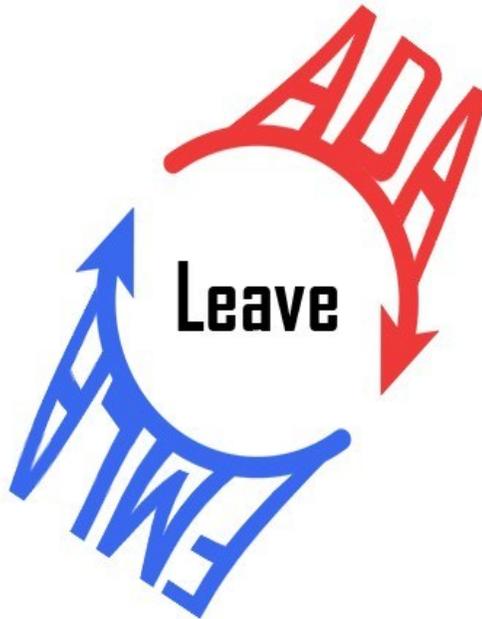
All employees are eligible for Paid Sick Leave immediately upon hire and for FMLA leave after 30 days of employment (including days spent on PSL)



Qualifying Reasons

FMLA

- To care for a spouse, child, or parent with a serious health condition.
- Employee's serious health condition.
- The birth, adoption, or fostering a child.
- Military-related leave.

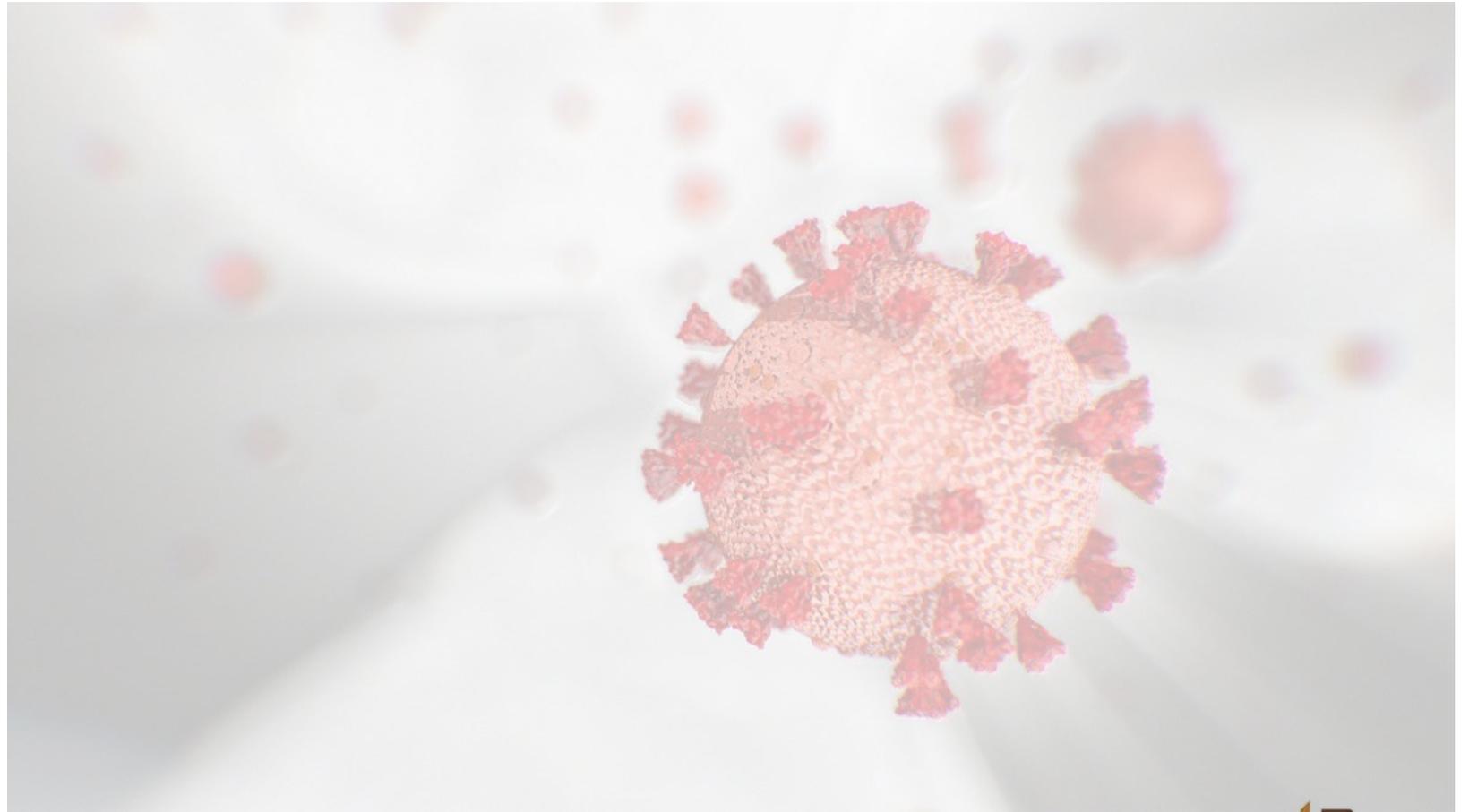


ADA

- A physical or mental impairment that substantially limits a major life activity.

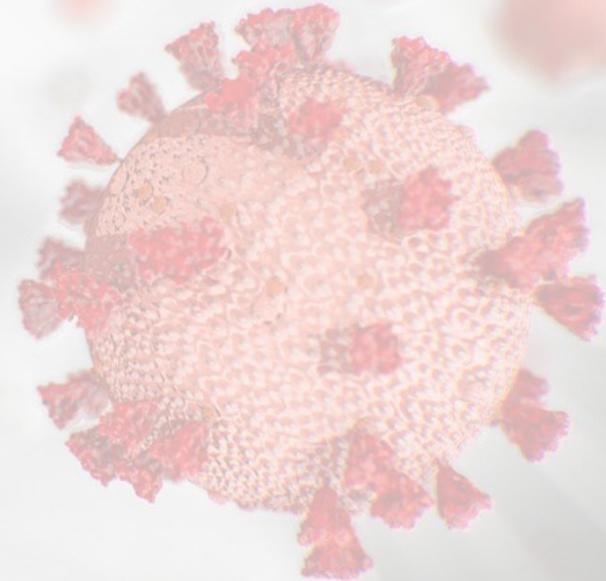
Qualifying Conditions for FMLA under the FFCRA

The employee is needed to care for his/her minor child because of a school or daycare closure necessitated by the COVID-19 public health emergency.



Qualifying Conditions for PSL under the FFCRA

1. Employee is subject to government quarantine or social distancing order;
2. Employee has been advised by a health care provider to self-quarantine;
3. Employee is seeking a diagnosis for COVID-19 symptoms;
4. Employee is caring for someone affected by condition (1) or (2);
5. Employee is caring for a child whose school is closed or daycare provider is unavailable; or
6. Other substantially similar conditions specified by the HHS Secretary.



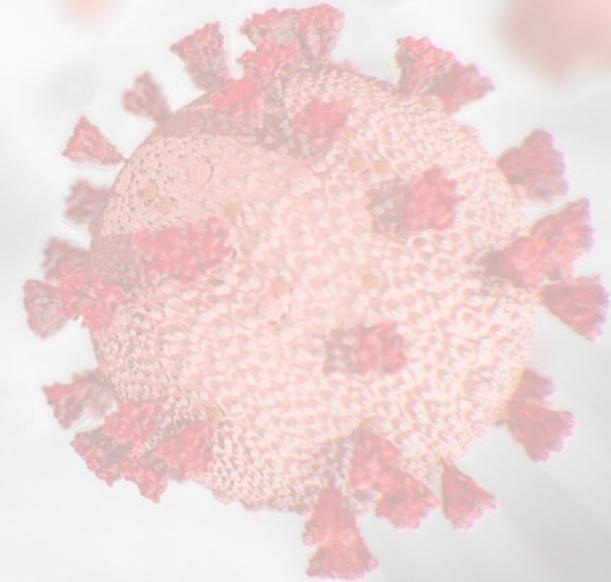
Compensation under FMLA and PSL

1. Weeks 1-2 (PSL)

- For PSL conditions 1-3 – 100% pay, capped at \$511/day (\$5,100 total)
- For PSL conditions 4-6 – 66.6% pay, capped at \$200/day (\$2,000 total)

1. Weeks 3-12 (FMLA)

- For the new FMLA condition – 66.6% pay, capped at \$200/day (\$10,000 total)
- For all other FMLA conditions – no required compensation.



Pregnancy

FMLA

- In addition to birth of a child, FMLA provides for:
 - Incapacity due to pregnancy
 - Prenatal care
 - Serious health condition following birth

ADA

- Pregnancy itself is generally not recognized as a disability under the ADA.
- However, impairments related to pregnancy may qualify as a disability under the ADA.

Leave Entitlement



- Up to 12 weeks of unpaid leave during 12-month period
- Up to 26 weeks of unpaid leave during 12-month period as military caregiver



- ADA does not mandate paid or unpaid leave for any specific amount of leave

Notice Requirements

FMLA

- 30 days notice when foreseeable
- As soon as practicable when unforeseeable

ADA

- Request for an accommodation



Employer Response Requirements under the FMLA



An employer must provide to the employee a notice of eligibility and rights and responsibilities within 5 business days of the request for FMLA leave.

Employer Response Requirements under the ADA



Once an employer receives a request for a reasonable accommodation, the employer must respond promptly.



Health Insurance During Leave

FMLA

Employers must maintain the employee's existing level of coverage during the FMLA leave

ADA

- Employers must continue employee's health insurance benefits only if the employer does so for other employees with a similar leave status

Job Restoration



FMLA

- The FMLA requires employers to reinstate the employee to the same or equivalent position.

ADA

- ADA requires employers to:
 - Hold the job open while employee is on leave unless the employer can show undue hardship.
 - Allow the employee to return to the same position if employee is still qualified.
 - Reassign the employee (absent undue hardship) to a vacant position for which the employee is qualified under limited circumstances.

Fitness-for-Duty when Returning to Work

FMLA

- Employers may require employees who are on leave because of their own serious health condition to provide a fitness-for-duty certification as a condition of reinstatement, but the employer must provide advanced notice of the need for this certification and its requirements.

ADA

- The ADA does not specifically address fitness-for-duty certifications for employees returning from accommodation leave, but the ADA requires that any medical examinations be both:
 - Job-related; and
 - Consistent with business necessity.

Reminder Regarding Recordkeeping



CONFIDENTIAL

- Medical records and information must be kept confidential and stored in medical files separate from other personnel documentation.

Retaliation Prohibited



Retaliation for taking leave under the FMLA or ADA is strictly prohibited.