

DRAFT MODEL LEGISLATION
Establishing Public Health Emergency Leave That Covers the Private-Sector Gaps in the
Federal Families First Coronavirus Response Act

The following model bill would establish public health emergency leave during a public health emergency, which is especially necessary given the current pandemic. This model specifically covers private-sector workers who have been left out of the Families First Coronavirus Response Act (FFCRA). This legislation was adapted from model paid sick and safe time legislation developed by A Better Balance and the National Partnership for Women & Families.

Please note that the President signed into law the [Families First Coronavirus Response Act \(FFCRA\)](#) on March 18, 2020, and it took effect on April 1, 2020.

- Among other provisions, the law will provide—until December 31, 2020—80 hours of emergency paid sick days for certain needs related to coronavirus (including a worker’s or family member’s quarantine/self-isolation, seeking a medical diagnosis due to coronavirus symptoms, or when a child’s school or place of care is closed or childcare is unavailable). **The law applies to public agencies regardless of size, but it only covers private entities that employ fewer than 500 employees. Moreover, an employer of a health care provider or emergency responder may elect to exclude such worker from the emergency leave provisions.**
- Furthermore, the Secretary of Labor has authority to issue regulations for good cause that: 1) exclude certain health care providers or emergency responders from eligibility, including by allowing their employers to opt them out; and 2) exempt businesses with fewer than 50 employees from the emergency paid sick and family leave requirements related to school and child care closures, or the unavailability of child care due to coronavirus, when the imposition of such requirements would jeopardize the business’ viability. The Department of Labor has in fact issued regulations allowing for both exemptions, and the regulations define “health care provider” and “emergency responder” broadly. The exemption for businesses with fewer than 50 employees from the leave requirements on school/child care closures, or unavailability of child care, allow those businesses to meet the exemption by documenting certain information for their records (rather than submitting information to the government for any review).
- The Director of the Office of Management and Budget also has the authority to exclude certain federal government employees from the law’s leave provisions, but this is an area—the federal workforce—where state and local governments are not able to provide broader coverage.
- This draft provides model language for jurisdictions that want to address the gaps in the federal FFCRA by covering private-sector workers who are excluded from that law.
 - In addition to the 80 hours of emergency paid sick time, workers are eligible under the FFCRA for partial wage replacement for up to 12 weeks (including the 80 hours of emergency sick time) *but only when a worker needs to care for a child whose school/place of care has been closed, or childcare is unavailable, due to coronavirus.* We are available to discuss options and considerations for extending longer-term coverage for such closures or unavailability of childcare.
 - We also have available: 1) [model legislation](#) that provides broader public health emergency leave that covers all workers and employers; and 2) [model legislation](#) establishing a full, permanent right to paid sick time that includes additional time off for public health emergency leave.

Drafting a paid leave policy requires state-specific research, analysis of underlying state and/or local law and consideration of complex policy issues. Please contact us at sleiwant@abetterbalance.org or jmake@abetterbalance.org regarding more information on how to adapt or customize this model.

A Bill to Be Entitled “Public Health Emergency Leave Act”

Whereas the [legislative body] finds that:

[Note: Legislative findings are available if such findings are typical in your jurisdiction and you would like to include them.]

The purposes of this Act are:

- (1) To ensure that all workers in [X - State or Local Government Name] have access to emergency leave and can address their own health needs and those of their family members during a public health emergency, by requiring employers to provide a minimum level of paid sick time, including time to care for their family members;
- (2) To ensure that all workers in [X] and their families can follow the orders and recommendations of public health officials or health care providers during an emergency that threatens their health and the health of others in the community;
- (3) To protect the public’s health in [X] by reducing the risk of contagion during a public health emergency;
- (4) To promote the economic security and stability of all workers in [X] and their families during a public health emergency;
- (5) To protect all workers in [X] from losing their jobs or facing workplace discipline when they use paid sick time during a public health emergency to care for themselves or their families;
- (6) To safeguard the public welfare, health, safety and prosperity of the people of [X]; and
- (7) To accomplish the purposes described in paragraphs (1)-(6) in a manner that is feasible for employers.

[Note: You can consider tailoring these purposes to more specifically address the need to cover the categories of workers who do not receive paid leave through the federal FFCRA.]

Be It Enacted by the [Legislature/Council/Government Body of X]:

Section 1. Definitions

For Purposes of this Act:

- (1) “Agency” means [state, county or city agency responsible for enforcement of labor laws or the agency, with sufficient authority, that is best suited to enforcing this law, if there is no local labor enforcement agency].
- (2) “Child” means a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands *in loco parentis*, regardless of age. *[Note: this is an expansion from the FFCRA in terms of covering a child regardless of age and using gender neutral language.]*

(3) “Employ” includes to suffer or permit to work.

(4) “Employee” is as defined in [state wage and hour law, local law or federal Fair Labor Standards Act (29 U.S.C. § 203(e)); you should choose the most inclusive] who works at least [# - typically 80] hours in [X] in a calendar year and is:

- (A) A recipient of public benefits who is engaged in work activity as a condition of receiving public assistance; or
- (B) An individual employed by an employer with 500 or more employees; or
- (C) A health care provider or an emergency responder employed by a private entity or individual that employs fewer than 500 employees but only if the health care provider or emergency responder has been excluded under Section 5102(a) or Section 5111(1) of the Families First Coronavirus Response Act and any regulations thereunder from the Families First Coronavirus Response Act’s protections; or
- (D) An individual employed by an employer who has been otherwise exempted from Section 5102(a)(5) of the Families First Coronavirus Response Act under Section 5111(2) of the Families First Coronavirus Response Act and any regulations thereunder.

[May also specifically add: An “Employee” does not include an “employee” as defined by 45 U.S.C. 351(d) who is subject to the federal Railroad Unemployment Insurance Act, 45 U.S.C. 351 et seq.]

(5) “Employer” is as defined in [state wage and hour law, local law or federal Fair Labor Standards Act (29 U.S.C. § 203(d)); you should choose the most inclusive].

For the purposes of this Act, “employer” does not include any of the following:

- (A) A private entity or individual that employs fewer than 500 employees pursuant to Section 5110(2)(B)(i)(I)(aa) of the Families First Coronavirus Response Act, unless that entity or individual: (i) employs a health care provider or an emergency responder who has been excluded under Section 5102(a) or 5111(1) of the Families First Coronavirus Response Act and any regulations thereunder; or (ii) has been exempted from Section 5102(a)(5) of the Families First Coronavirus Response Act under Section 5111(2) of the Families First Coronavirus Response Act and any regulations thereunder.
- (B) The United States Government.
- (C) **For local bills only:** The State of [X] including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary.
- (D) **For local bills only:** Any county or local government other than [X – **OR For local bills if necessary due to limitations on authority of legislative body to determine benefits for locality’s own workers:** Any county or local government.]

To determine the number of employees employed under this Act, the same standard shall be used as determining the number of employees employed under the Families First Coronavirus Act and regulations thereunder.

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(6) “Families First Coronavirus Response Act” means the federal Families First Coronavirus Response Act, H.R. 6201, Public Law No. 116-127, signed into law by the President of the United States on March 18, 2020.

(7) “Health care professional” means any person licensed under Federal [or State] law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel.

(8) “Public health emergency” means a declaration or proclamation related to a public health threat, risk, disaster, or emergency that is made or issued by a federal, state or local official with the authority to make or issue such a declaration or proclamation.

[Note: You should consider whether to tie this explicitly to COVID-19, as under the federal FFCRA; depending on the decision made, the language in Section 3(1)-(2) should track this for purposes of leave.]

(9) “Public health emergency leave” means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in Section 3 of this Act, but in no case shall this hourly amount be less than that provided under 29 U.S.C. §206(a)(1) [or your state or local minimum wage law].

[Note: The FFCRA provides caps on the amount of available wage replacement an employer is required to provide—although an employer can provide more—and only 2/3 of wage replacement, up to the cap, for purposes relating to caring for another individual or child; we recommend providing full wage replacement as drafted here.]

(10) “Retaliatory personnel action” means denial of any right guaranteed under this Act and any threat, discharge, suspension, demotion, reduction of hours, reporting or threatening to report an employee’s suspected citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the employee to a federal, state or local agency, or any other adverse action against an employee for the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this Act. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this Act.

[Note: This model includes recommendations around enforcement of a state or local public health emergency leave law, including this definition.]

(11) “Whistleblower” means a current or former employee, contractor, subcontractor or employee of such a contractor or subcontractor of an alleged violator of this Act, regardless of whether that person has received full or partial relief under Section 8.

[Note: whistleblower protections, which are not included in the FFCRA, are included as an enforcement option under Section 8(4) of this model bill; this definition should only be included if those protections are added.]

Section 2. Use of Public Health Emergency Leave

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(1) On the date of a public health emergency affecting [state/local government name], an employer shall provide each employee of an employer with public health emergency leave in the following amount: (A) employees who normally work 40 or more hours in a week shall be provided at least 80 hours of public health emergency leave; (B) employees who work fewer than 40 hours in a week shall be provided at least an amount of public health emergency leave equal to the number of hours that such employee works, on average, over a 2-week period, whichever is greater.

(2) In the case of an employee described in (1)(B) whose schedule varies from week to week, the employer shall use the following in place of such number to determine the amount of time worked on average in a 2-week period: (A) Subject to (2)(B), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes the public health emergency leave, including hours for which the employee took leave of any type; (B) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

[Note: The federal FFCRA uses a similar standard, but we recommended a few edits for greater clarity that are reflected above.]

(3) If a public health emergency was declared before and remains in effect on the effective date of this Act, public health emergency leave under this Act shall be: (i) provided to employees pursuant to (1) on the effective date of this Act.

[Note: The federal FFCRA does not provide for retroactive use of emergency leave, after the public health emergency began and before the law took effect; we recommend considering feasibility of such retroactivity in your jurisdiction.]

(4) The public health emergency leave required in (1) shall be available for immediate use by the employee for the purposes described in Section 3, regardless of how long the employee has been employed by an employer.

[Note: While leave under the federal FFCRA sunsets on a specific date, December 31, 2020, we recommend considering whether an employee shall be entitled to use their public health emergency leave under a state or local law for a certain number of weeks following either the official termination or suspension of the public health emergency or, if relevant, any sunset of the local/state law].

(5) An employee may first use the public health emergency leave under this Act for the purposes described in Section 3. An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the public health emergency leave under (1).

[Note: We recommend considering whether to add a requirement that employers who provide paid leave on the day before the effective date of this Act cannot change such paid leave on or after the effective date of this Act to avoid being subject to this subsection.]

(6) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for purposes of public health emergency leave under this Act unless their normal work week is less than 40 hours, in which case public health emergency leave under this Act is based upon that normal work week.

[Note: This is a recommended addition for a state or local public health emergency leave law.]

(7) Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for public health emergency leave that has not been used.

Section 3. Public Health Emergency Leave Purposes

(1) Except as described in (2), an employer shall provide to each employee employed by the employer public health emergency leave to the extent that the employee is unable to work (or telework) due to a need for leave because:

(A) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 [or a public health emergency].

(B) The employee has been advised by a health care professional to self-quarantine due to concerns related to COVID-19 [or a public health emergency].

(C) The employee is experiencing symptoms of COVID-19 [or symptoms related to a public health emergency] and seeking a medical diagnosis.

(D) The employee is caring for an individual who is subject to an order as described in (A) or has been advised as described in (B). [*Note: The U.S. Department of Labor has broadly interpreted "individual" for this purpose, noting that a personal relationship with the employee is required and the individual "must be an immediate family member, roommate, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined."*]

(E) The employee is caring for a child of such employee if the school or place of care of the child has been closed, or the child care provider of such child is unavailable, due to COVID-19 precautions [or other precautions related to a public health emergency].

(F) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor [, or insert a relevant local/state public health official].

[*Note: We recommend considering whether to broaden these purposes from the federal FFCRA, such as: 1) applying this to all public health emergencies as opposed to just COVID-19, which should be consistent throughout the Act; 2) providing leave if a family member's place of care is closed due to COVID-19, or a family member's care provider is unavailable, which may be especially important for eldercare and care of loved ones with a disability (we have [model language](#) recommendations for inclusive family definitions, if a new "family member" definition is used); 3) allowing workers to care for a loved one who is experiencing symptoms of COVID-19 or another condition related to a public health emergency, and is seeking a medical diagnosis; 4) more explicit coverage, depending on language relevant to your jurisdiction, about shelter-in-place or stay-at-home orders, as well as broader coverage for all personal/family medical purposes related to COVID-19 or the public health emergency; and/or 5) inability to work or telework due to closure of the employee's place of business by order of a local, state, or federal public official or health authority or at the discretion of the employer due to COVID-19 or a public health emergency. We have language available for these purposes in our broader [public health emergency leave model](#).]*

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(2) An employer who has been exempted from Section 5102(a)(5) of the Families First Coronavirus Response Act under Section 5111(2) of the Families First Coronavirus Response Act and any regulations thereunder shall only be required under this Act to provide to each employee employed by the employer public health emergency leave to the extent that the employee is unable to work (or telework) due to a need for leave as specified in (1)(E) of this Act.

[Note: as described in the introduction to this model, the federal law allows businesses with fewer than 50 employees to exempt their workers from the emergency paid sick and family leave requirements only for the purpose related to school and child care closures, or the unavailability of child care due to coronavirus; the language in this model bill would cover those workers only for that purpose excluded by the federal law. It could mean, however, that those workers can take time off under the federal law for all of the other non-school/care closure purposes in addition to 80 hours under this state or local ordinance for school/care closures or unavailability of child care. We are available to discuss this in more detail.]

(3) After the first workday (or portion thereof) an employee receives public health emergency leave under this Act, an employer may require the employee to follow reasonable notice procedures in order to continue receiving such public health emergency leave.

[Note: we recommend considering the addition of a requirement that such reasonable notice only be required for foreseeable leave and when the employer's place of business is open.]

(4) An employer may not require, as a condition of an employee's taking public health emergency leave, that the employee search for or find a replacement worker to cover the hours during which the employee is using public health emergency leave.

(5) Public health emergency leave may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

[Note: we recommend adding the right to intermittent leave; regulations under the federal FFCRA allow intermittent leave for school/childcare closures, or unavailability of child care, or for any purposes under the FFCRA when the worker is directed or allowed by the employer to telework, but the worker and employer must agree on the use of intermittent leave.]

(6) Documentation shall not be required for public health emergency leave under this Act.

[Note: we recommend waiving any requirement to documentation; while the federal FFCRA statute itself does not address documentation, regulations under the federal FFCRA have detailed requirements around documentation.]

Section 4. Exercise of Rights Protected; Retaliation Prohibited

[Note: This section provides recommended language around retaliation for a state or local public health emergency leave law.]

(1) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Act.

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- (2) An employer shall not take retaliatory personnel action or discriminate against an employee or former employee because the person has exercised rights protected under this Act. Such rights include but are not limited to the right to request or use public health emergency leave pursuant to this Act; the right to file a complaint with the Agency or courts or inform any person about any employer's alleged violation of this Act; the right to participate in an investigation, hearing or proceeding or cooperate with or assist the Agency in its investigations of alleged violations of this Act; and the right to inform any person of his or her potential rights under this Act.
- (3) It shall be unlawful for an employer's absence control policy to count public health emergency leave taken under this Act as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.
- (4) Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this Act.
- (5) There shall be a rebuttable presumption of unlawful retaliatory personnel action under this section whenever an employer takes adverse action against a person within 90 days of when that person: (a) files a complaint with the Agency or a court alleging a violation of any provision of this Act; (b) informs any person about an employer's alleged violation of this Act; (c) cooperates with the Agency or other persons in the investigation or prosecution of any alleged violation of this Act; (d) opposes any policy, practice, or act that is unlawful under this Act; or (e) informs any person of his or her rights under this Act.

Section 5. Notice and Posting

[Note: This section is a recommended addition for a state or local public health emergency leave law.]

- (1) Employers shall give employees written notice of the following at the commencement of employment or by the effective date of this Act, whichever is later, and annually thereafter: employees are entitled to public health emergency leave and the amount of public health emergency leave, the terms of its use guaranteed under this Act, that retaliatory personnel action against employees who request or use public health emergency leave is prohibited, that each employee has the right to **file a complaint or bring a civil action, depending on what enforcement measures are included** if public health emergency leave as required by this Act is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking public health emergency leave, and the contact information for the Agency where questions about rights and responsibilities under this Act can be answered.
- (2) The notice required in (1) shall be in English, **[X, X]** and any language that is the first language spoken by at least **[X%]** of the employer's workforce, provided that such notice has been translated and provided by the Agency.
- (3) The amount of public health emergency leave available to the employee, the amount of public health emergency leave taken by the employee to date in the year and the amount of pay the employee has received as public health emergency leave shall be recorded in, or on an attachment to, the employee's regular paycheck.
- (4) Employers shall display a poster that contains the information required in (1) in a conspicuous and accessible place in each establishment where such employees are employed; provided, however, that in cases where the employer does not maintain a physical workplace, or an employee teleworks or performs

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work through a web-based platform, notification shall be sent via electronic communication or a conspicuous posting in the web-based platform. The poster displayed shall be in English, [X, X,] and any language that is deemed appropriate by the Agency, provided that such poster has been provided by the Agency.

(5) The Agency shall create and make available to employers model notices and posters that contain the information required under (1) for employers' use in complying with (1) and (4).

(6) If an employer's business is closed due to a public health emergency, the notice and posting requirements under (1) and (4) shall be waived for the period in which the place of business is closed.

(7) An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed [\$100] for each separate offense.

Section 6. Employer Records

[Note: This section is a recommended addition for a state or local public health emergency leave law.]

Employers shall retain records documenting hours worked by employees and public health emergency leave taken by employees, for a period of [three] years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Act. When an issue arises as to an employee's entitlement to public health emergency leave under this section, if the employer does not maintain or retain adequate records documenting hours worked by the employee and public health emergency leave taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated the Act, absent clear and convincing evidence otherwise.

Section 7. Regulations

The Agency shall be authorized to coordinate implementation and enforcement of this Act and shall promulgate appropriate guidelines or regulations for such purposes.

Section 8. Enforcement

[Note: There are several different ways to enforce a state or local public health emergency leave law, and a bill can contain a combination of them as long as the jurisdiction permits the types of enforcement selected. The model language includes all options. We are available to help streamline this language.]

(1) Administrative Enforcement

(A) The Agency shall enforce the provisions of this Act. In effectuating such enforcement, the Agency shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this Act and investigate complaints received by the Agency in a timely manner.

(B) Any person alleging a violation of this Act shall have the right to file a complaint with the Agency within [X days/weeks/months/years] of the date the person knew or should have known of the alleged violation. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation, provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Act or for other appropriate purposes.

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(C) Upon receiving a complaint alleging a violation of this Act, the Agency shall investigate such complaint. The Agency shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the Agency believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The Agency shall prescribe the form and wording of such notices of violation including any method of appealing the decision of the Agency.

(D) The Agency shall have the power to impose penalties provided for in this Act and to grant an employee or former employee all appropriate relief. Such relief shall include but not be limited to: (1) for each instance of public health emergency leave taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this Act or [\$X] whichever is greater; (2) for each instance of public health emergency leave requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker: [\$X]; (3) for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, an additional amount of at least [\$X] and equitable relief as appropriate; and (4) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, [\$X] and equitable relief, including reinstatement, as appropriate.

(E) Any entity or person found to be in violation of the provisions of this Act shall be liable for a civil penalty payable to [state/county/city] not to exceed [\$X] for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed [\$X] for the second violation and not to exceed [\$X] for each successive violation.

(F) The Agency shall annually report on its website the number and nature of the complaints received pursuant to this Act, the results of investigations undertaken pursuant to this Act, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this Act, and the average time for a complaint to be resolved pursuant to this chapter.

(2) Civil Enforcement

(A) The Agency, the Attorney General [or City/County Attorney], any person aggrieved by a violation of this Act, or any entity a member of which is aggrieved by a violation of this Act may bring a civil action in a court of competent jurisdiction against an employer violating this Act. Such action may be brought by a person aggrieved by a violation of this section without first filing an administrative complaint.

(B) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall recover the full amount of any unpaid public health emergency leave plus any actual damages suffered as the result of the employer's violation of this Act plus an equal amount of liquidated damages. Aggrieved persons shall also be entitled to reasonable attorney's fees.

(C) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, reinstatement to employment, back pay and injunctive relief.

(D) Any person aggrieved by a violation of this Act may file a complaint with the Attorney General [or City/County Attorney]. The filing of a complaint with the Attorney General [or City/County Attorney] will not preclude the filing of a civil action.

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(E) The Attorney General [or City/County Attorney] may bring a civil action to enforce this Act. The Attorney General [or City/County Attorney] may seek injunctive relief. In addition to injunctive relief, or in lieu thereof, for any employer or other person found to have willfully violated this Act, the Attorney General [or City/County Attorney] may seek to impose a fine of [\$X - example: \$1,000] per violation, payable to the [City/County/State].

(F) The statute of limitations for a civil action brought pursuant to this section shall be for a period of [#] years from the date the alleged violation occurred or the date the employee knew or should have known of the violation.

(G) Actions brought pursuant to this section may be brought as a class action pursuant to the laws of [state].

(3) [City/County/State] officials are hereby authorized to consider, to the maximum extent permitted by law, an employer's record of noncompliance with this Act in making decisions on [city/county/state] contracts, land use approvals and other entitlements to expand or operate within the [city/county/state]. The [city/county/state] is authorized to either deny approval or to condition approval on the employer's future compliance.

(4) *Whistleblower Protection*

(A) The penalties specified in Section 8(1)(E), and injunctive and declaratory relief, may be recovered through a civil action brought on behalf of the Agency in a court of competent jurisdiction by a whistleblower or by a representative nonprofit or labor organization designated by said person, pursuant to the following procedures:

(i) The whistleblower shall give written notice to the Agency of the specific provisions of this Act alleged to have been violated. The whistleblower or representative organization may commence a civil action under this subsection if no enforcement action is taken by the Agency within 120 days.

(ii) Civil penalties recovered pursuant to this subsection shall be distributed as follows: 70 percent to the Agency for enforcement of this act, with 25 percent of that amount reserved for grants to community organizations for outreach and education about employee rights under this Act; and 30 percent to the whistleblower or representative organization to be distributed to the employees affected by the violation. Any person that prevails in an action under this section, whether or not the Agency has intervened in that action, shall be entitled to an award of reasonable attorney's fees and costs.

(iii) The right to bring an action under this section shall not be impaired by any private contract. A public enforcement action shall be tried promptly, without regard to concurrent adjudication of private claims.

Section 9. Confidentiality and Nondisclosure

[Note: This section is a recommended addition for a state or local public health emergency leave law.]

Any health or safety information possessed by an employer regarding an employee or employee's family member must:

(1) be maintained on a separate form and in a separate file from other personnel information;

- (2) be treated as confidential medical records; and
- (3) not be disclosed except to the affected employee or with the express permission of the affected employee.

Section 10. Encouragement of More Generous Paid Leave Policies; No Effect on More Generous Policies or Laws

[Note: This section is a recommended addition for a state or local public health emergency leave law, building on how the federal FFCRA states that it does not diminish the rights and benefits of other laws.]

- (1) Nothing in this Act shall be construed to discourage or prohibit an employer from the adoption or retention of a paid leave or public health emergency leave policy more generous than the one required herein.
- (2) Nothing in this Act shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous paid sick time to an employee than required herein. Nothing in this Act shall be construed as diminishing the rights of public employees regarding paid leave or public health emergency leave, or use of paid sick time as provided in [laws of the state/local government pertaining to paid sick time and public employees].
- (3) [For State laws] Nothing in this Act shall be construed to supersede any provision of any local law that provides greater rights to paid leave or public health emergency leave than the rights established under this Act.

Section 11. Other Legal Requirements

[Note: This section is a recommended addition for a state or local public health emergency leave law.]

This Act provides minimum requirements pertaining to public health emergency leave and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for a greater amount, accrual, or use by employees of paid leave or public health emergency leave or that extends other protections to employees.

Section 12. Public Education and Outreach

[Note: This section is a recommended addition for a state or local public health emergency leave law.]

The Agency [or another relevant official, administrative agency] shall develop and implement a multilingual outreach program to inform employees, employers, parents, elder care providers, and persons who are under the care of a health care provider about the availability of public health emergency leave under this Act.

Section 13. Severability

[Note: This section is a recommended addition for a state or local public health emergency leave law.]

If any provision of this Act or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.



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Section 14. Effective Date

This Act will take effect [#] days following enactment.

[Note: We recommend reviewing legal options for the quickest possible effective date for this Act, given the urgency of the pandemic. We also urge consideration of political and legal considerations on whether the law is time-limited or permanent; if time-limited—like how the federal FFCRA sunsets on December 31, 2020—advocates and officials should consider when to sunset the law, given the realities of the current pandemic; if the local or state law sunsets after December 31, 2020, citations to the federal FFCRA should be adjusted, which we can discuss with you].

Please note that this document does not constitute legal advice.