



## ISSUE BRIEF

# COVID-19 Paid Sick Leave Protections for Agricultural Workers

As of December 1, 2020, more than 13 million people in the United States have been infected with COVID-19 and nearly 270,000 have died.<sup>1</sup> In response, federal, state, and local officials have issued multiple regulations and guidance to help slow the spread of the pandemic and keep communities safe. The guidance and regulations include the Centers for Disease Control and Prevention (CDC) recommendation that people who test positive for COVID-19 isolate themselves and that those who may have been exposed to COVID-19 quarantine.<sup>2</sup> Unfortunately, for many agricultural workers, staying home and missing a paycheck isn't feasible. Most are paid low wages and live in crowded housing where COVID-19 can spread rapidly among workers and family members.

Recognizing the danger facing workers across the country, Congress passed the [Families First Coronavirus Response Act](#) (FFCRA) in early March to help ensure that sick workers

can stay home and avoid infecting others without losing wages. The Act, along with the Wage and Hour Division's implementing regulations, imposes paid leave obligations on private employers with fewer than 500 employees.<sup>3</sup> Covered employees must provide two weeks (up to 80 hours)<sup>4</sup> of paid sick leave to a worker who: (1) is unable to work because he/she is subject to a quarantine or isolation order; (2) has been advised to self-quarantine; (3) is experiencing symptoms of COVID-19; (4) is caring for an individual who must quarantine; (5) is caring for a child whose school or child care is closed because of COVID-19; or (6) is experiencing symptoms substantially similar to those identified as COVID-19 symptoms.

The table below details who qualifies for these protections, the length of paid sick leave to which they are entitled, and the rate they must be paid during their leave.

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<sup>1</sup> *COVID in the U.S.: Latest Map and Case Count*, New York Times, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>

<sup>2</sup> *Coronavirus Disease 2019 (COVID-19) – When to Quarantine*, Centers for Disease Control and Prevention, available at: <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine.html>

<sup>3</sup> Employers with more than 500 employees are excluded from the Act's requirements. Small businesses with fewer than 50 employees may also be exempt from some of the Act's requirements, including the requirement that employers provide leave where the employee's child cannot attend school or child care because of COVID-19 closures. The business must show that offering such leave would jeopardize the viability of the business.

<sup>4</sup> A full-time worker is entitled to receive up to 80 hours of paid sick leave. A part-time worker is entitled to receive the number of hours of leave that he/she works during an average two-week period.

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Employee's COVID-19 related reason for being unable to work	Applies to...	Length of protection	Pay
They are subject to a Federal, State, or local quarantine or isolation order.	All employees employed by an employer with fewer than 500 employees.	2 weeks	The higher of either (a) the regular rate of pay or (b) the minimum wage.
They have been advised by a health care provider to self-quarantine.	All employees employed by an employer with fewer than 500 employees.	2 weeks	The higher of either (a) the regular rate of pay or (b) the minimum wage.
They are experiencing COVID-19 symptoms and are seeking a medical diagnosis.	All employees employed by an employer with fewer than 500 employees.	2 weeks	The higher of either (a) the regular rate of pay or (b) the minimum wage.
They are caring for an individual who is subject to a quarantine order or who has been advised to self-quarantine by a health care provider.	All employees employed by an employer with fewer than 500 employees.	2 weeks	The higher of either (a) $\frac{2}{3}$ the regular rate of pay or (b) $\frac{2}{3}$ the minimum wage.
They are caring for a child whose school or child care is closed or unavailable because of COVID-19.	All employees employed by an employer with between 50-500 employees.	2 weeks <sup>5</sup>	The higher of either (a) $\frac{2}{3}$ the regular rate of pay or (b) $\frac{2}{3}$ the minimum wage.
They are experiencing symptoms substantially similar to COVID-19, as specified by the Secretary of Health and Human Services.	All employees employed by an employer with fewer than 500 employees.	2 weeks	The higher of either (a) $\frac{2}{3}$ the regular rate of pay or (b) $\frac{2}{3}$ the minimum wage/

<sup>5</sup> An employee of an employer with between 50-500 employees, who has been employed by the same employer for at least 30 days, is entitled to an additional 10 weeks of paid leave if they must care for a child whose school or child care is closed because of COVID-19. They are entitled to the higher of (a)  $\frac{2}{3}$  of their regular rate of pay or (b)  $\frac{2}{3}$  of the minimum wage.

Workers can also confirm their eligibility for paid sick leave under the FFCRA by using the [Wage and Hour Division's online tool](#). Importantly, the FFCRA prohibits employers from retaliating or discriminating against any employee who takes advantage of their rights under the Act.

In implementing the Act, the Wage and Hour Division established [certain documentation and reporting requirements for employers](#). As a result, workers seeking leave under the Act will likely be required to provide relevant information to their supervisors. Workers should be prepared to provide their supervisors, in writing, the following information:

1. The employee's name;
2. The dates of leave requested;
3. A statement that the employee is unable to work; and
4. The reason for seeking leave.
  - a. If the worker is requesting leave because they are subject to a federal, state, or local quarantine or isolation order, then they must provide the name of the government entity issuing the order.
  - b. If the worker is requesting leave because they have been advised to self-quarantine, then they must provide the name of the health care provider who made the recommendation.
  - c. If the worker is requesting leave because their child's school or daycare is closed, then they must provide the:
    - i. name of the child,

- ii. name of the school or place of care, and
- iii. a statement that no other person is available to care for the child.

The FFCRA protections are set to expire on **December 31, 2020**. Despite the ongoing pandemic, it is unclear whether the federal government will enact any new sick leave legislation before the Act's expiration. Given this limited time frame, some states have passed their own legislation to protect workers' access to paid sick leave. These protections vary across the top ten agriculture states:

**California:** Governor Gavin Newsom issued [Executive Order N-51-20](#),<sup>6</sup> which explicitly protects the rights of food workers, including agricultural workers, to paid sick leave if the worker is unable to work because: (1) the worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19; (2) the worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or (3) the worker is prohibited from working due to health concerns related to the potential transmission of COVID-19. The executive order will remain in effect until December 31, 2020, although it may be extended.

**Florida:** Florida has not issued any paid sick leave protections.

**Michigan:** Governor Gretchen Whitmer issued an [Executive Order](#) prohibiting employers from discharging, disciplining, or otherwise retaliating against an employee who is unable to work due to reasons related to COVID-19. The Order does not require paid sick leave. In-

<sup>6</sup> For more information, go to *Frequently Asked Questions on California COVID-19 Supplemental Paid Sick Leave* at <https://www.dir.ca.gov/dlse/FAQ-for-PSL.html>.

stead, it requires that employers treat employees as if they were taking leave under Michigan's Paid Medical Leave Act, which does not apply to agricultural workers.

**Minnesota:** Minnesota has not passed any paid sick leave protections. The cities of [Duluth](#), [Minneapolis](#), and [Saint Paul](#) have each issued their own city-wide paid sick leave protections.

**New York:** Governor Andrew Cuomo issued an Executive Order that requires certain employers to pay workers sick leave related to COVID-19. It also prohibits employers from retaliating against employees who take sick leave related to COVID-19. The specifics of what is required vary based on the employer's size. The state has published this [fact sheet](#) to help workers understand their rights.

**North Carolina:** Although a [Paid Sick Leave Bill](#) was introduced into the North Carolina House, it has not become law.

**Oregon:** Although Oregon has a general [paid sick leave law](#), it largely excludes agricultural workers.

**Texas:** Texas does not have paid sick leave protections.

**Washington:** Washington issued a [paid sick leave executive order](#) specifically for agricultural workers in effect between August 18 and November 13, 2020 with the intention of covering workers during the Washington apple harvest season. The state has not extended the program after its expiration.

**Wisconsin:** Wisconsin has not passed any paid sick leave protections.

Health care providers can help agricultural

workers understand and seek sick leave from their employer. It's important that health centers provide up-to-date, relevant, and accurate information about sick leave availability to their patients. Regulations related to COVID-19 are changing rapidly and workers may not be hearing about their paid sick leave options or legal protections from any other sources. Further, the information they hear may be misleading or inaccurate. If workers have questions or concerns that you are unsure about or are otherwise unable to answer, you can connect them to legal services providers in your community. Legal services providers may be able to help workers assert their rights and respond to any threats or retaliation from employers. We encourage health centers and legal services to build and develop medical-legal partnerships in their communities. Farmworker Justice developed a [medical-legal partnership guide](#) for agricultural worker-serving organizations that is available on our [website](#).

Farmworker Justice will continue monitoring federal and state paid sick leave protections for agricultural workers and will update this issue brief as needed during the COVID-19 pandemic. Please contact Gabriela Hybel at [ghybel@farmworkerjustice.org](mailto:ghybel@farmworkerjustice.org) or Alexis Guild at [aguild@farmworkerjustice.org](mailto:aguild@farmworkerjustice.org) if you have questions or would like to receive additional information.

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*HRSA Disclaimer: This publication is supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) as part of an award totaling \$550,000 with 0% financed by non-governmental sources. The contents are those of the author and do not necessarily represent the official views of, nor an endorsement by, HRSA, HHS, or the U.S. Government.*