

MUNICIPAL UTILITY QUESTIONS REGARDING FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Are there any issues municipal utility employers should consider if we had planned to continue paying our employees their full pay when we started to hear of school closings, possible absences for 14-day quarantines, actual COVID-19 sickness (or other respiratory illnesses) of themselves/family members, etc., before the Families First Coronavirus Response Act (FFCRA) was signed into law, in order to “keep them whole”?

If the utility is going to make an employee whole for compensation for missing work related to COVID-19, the declaration or policy adopting this should specifically exclude from that “make whole” pay any periods of time when the employee is receiving payments under FFCRA, either related to the enhanced sick leave 80 hours or the extended FMLA payments. The utility does not want to have to double pay those amounts and, if the employee qualifies for FFCRA payments, the employee is legally entitled to them.

The utility will want to compensate the employee under FFCRA anyway, because the utility does not have to pay FICA and Medicaid with respect to those payments but will have to make those payments for the “make whole” pay. If the employee’s normal compensation is greater than the amount permitted under FFCRA, which has caps on the payments, the utility can provide that during the time an employee is receiving FFCRA payments, the utility will make the employee whole for the balance of the employee’s regular pay check for that period above the amounts paid under FFCRA.

If April 2 is the effective date of the FFCRA, must we follow it to the letter starting with that date (including only 2/3 pay for certain types of absences, up to the caps) even if we would prefer to pay the employees their full pay for those types of absences? Note that the Department of Labor has now set the effective date as April 1.

- **If yes, we must follow to the letter, what if the employee wanted to substitute their own benefit balances (Sick, Vacation, etc.) so they could get full pay?**

You must follow FFCRA. Yes, you can supplement an employee’s pay to the extent that FFCRA payments are capped at less than the employee would have received in the work week.

- **If we are allowed to exceed it and pay the employees full pay, would that mean we as the employer would need to pay its share of the FICA tax, as usual?**

Any payments made outside of FFCRA payments would have to include the employer share of FICA and Medicaid. Only those payments made under FFCRA don’t have to include those employer payments.

- **If we had set up an “emergency sick leave” pay code for any COVID-19 related absences (employee sickness, family member sickness, unavailability of day care, school closing, etc.) with the intent to document the reasons for each employee’s absences and possibly swap out time later with other benefit balances, do you see any issues with that?**

It is a good idea to track time related to COVID-19 just as you would track FMLA time, because you want to keep track of how many hours you have paid to comply with the hours or weeks limits of FFCRA payments and the dollar amounts related to FICA and Medicaid withholding. I do not know what you mean by “swapping time out later.” If you mean supplementing pay for the weeks that an employee received FFCRA payment, yes, you will want to track the FFCRA time and payments.