

The Families First Coronavirus Response Act

President Trump has signed into law the Families First Coronavirus Response Act. We have summarized the law in the Compliance Alert attached here. The law goes into effect April 2, 2020 and will remain in place until the end of the year.

Emergency Paid Sick Leave Act

Eligibility: All employees of employers with fewer than 500 employees, regardless of the length of their tenure with their employer, are eligible for paid sick leave under the Emergency Paid Sick Leave Act.

Qualifying Reasons for Taking Paid Sick Leave: An eligible employee may take paid sick leave if he/she is unable to work (including telework) because:

1. The employee is subject to a federal, state, or local quarantine or isolation due to COVID-19;
2. A health care provider advised the employee to self-quarantine due to concerns related to COVID-19 (*self-imposed quarantine without medical advice does not qualify under the Act*);
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual (not limited to family members, although there is a stray reference to family members elsewhere in the Act, so stay tuned) who is either subject to a federal, state, or local quarantine or isolation due to COVID-19 or has been advised to self-quarantine due to concerns related to COVID-19;
5. The employee is caring for their child whose school has been closed or place of care is unavailable due to COVID-19 precautions; or
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor. The precise meaning of this sixth reason will be clarified by the Secretary of Health and Human Services.

Benefit: Full-time employees receive 80 hours of paid sick leave. Part-time employees receive the equivalent of the number of hours they would work, on average, during a two-week period. There is a separate method for calculating the benefit for part-time employees whose schedules vary widely from week to week.

For qualifying reasons 1, 2, and 3 (above), eligible employees will receive paid sick leave at their regular rate, except that in no event shall the amount paid exceed \$511 per day and \$5,110 in total.

For qualifying reasons 4, 5, and 6 (above), eligible employees will receive paid sick leave at two-thirds of their regular rate, except that in no event shall the amount paid exceed \$200 per day and \$2,000 total.

Paid sick leave does not carry over from one year to the next, and paid sick time ceases beginning with an employee's next scheduled work shift immediately following termination of the need for paid sick time (i.e., qualifying need). The Secretary of Labor is required to issue guidelines to assist employers in calculating leave benefits by April 2.

The employer can seek reimbursement for the wages paid to employees taking emergency paid sick leave through tax credits applicable to the employer's portion of Social Security taxes.

Use: All eligible employees may use paid sick time beginning on April 2. Employers may not require eligible employees to first use other paid leave provided by the employer before using paid sick leave under the Act, so this leave is in addition to any paid sick leave or PTO currently provided by employers. Employers may require employees to follow reasonable notice procedures to continue receiving such paid sick time after the first workday (or portion thereof) an employee receives paid sick time under this Act. In other words, employers may not require employees to provide advance notice prior to the first workday on which the employee takes paid sick leave under the Act.

Employer Posting Requirement: Employers must post a notice that advises employees of their rights under the Act. The Secretary of Labor is required to create such notice by March 25.

Emergency Expansion of Family Medical Leave to Provide Benefits to Employees Whose Child’s School or Place of Care Has Closed

The Families First Coronavirus Response Act also includes the Emergency Family and Medical Leave Expansion Act (the “FMLA Expansion Act”), which provides eligible employees whose child’s school or place of care has closed due to the COVID-19 public health emergency with a new federal source of paid leave.

On a temporary basis, the Emergency FMLA Expansion Act amends the FMLA and creates a new leave entitlement. For purposes of the new entitlement only, the Act alters the definition of employer to include all employers with fewer than 500 employees, and expands the definition of a covered employee to include all employees who have worked for covered employers (i.e., those with less than 500 employees) for at least 30 days. Again, the Secretary of Labor has the authority to exempt from the Emergency FMLA Expansion Act certain health care providers and emergency responders, and small businesses with fewer than 50 employees if the Act would jeopardize a business’s viability. We will update you once the actual regulation is released.

Qualifying Reason for Taking Expanded FMLA Leave: An eligible employee may take up to 12 weeks of leave if he/she is unable to work (including telework) because the employee must care for his/her child who is under 18 years of age and whose school or place of care has closed due to the COVID-19 public health emergency.

Benefit: A qualifying employee may take up to 12 weeks of leave. The initial 10 days of leave are unpaid, but the employee may elect to use his/her accrued paid sick leave and/or accrued vacation during this otherwise unpaid period. After the initial 10-day period, an employee is entitled to receive from the employer two-thirds of his/her normal wages for the number of hours he/she would be regularly scheduled to work, up to a maximum of \$200 per day and \$10,000 in total.

Use: All eligible employees may apply for expanded FMLA leave beginning on April 2. If the necessity for leave is foreseeable, the employee must provide the employer with “such notice of leave as is practicable.”

Restoration to Position: For employers with 25 or more employees, an employee returning from expanded FMLA leave is entitled to reinstatement to the same or an equivalent position. For employers with fewer than 25 employees, an employee returning from expanded FMLA leave is entitled to reinstatement to the position held by the employee when the leave commenced unless that position does not exist due to economic conditions or other changes in operating conditions caused by the public health emergency. In such case, the employer must make reasonable efforts to restore the employee to an equivalent position, and if those efforts fail, make reasonable efforts for at least a year to contact the employee if an equivalent position becomes available.

Employer Tax Credits: Employers will be provided refundable tax credits against their employer portion of Social Security taxes for 100% of the qualified sick leave and family leave wages paid in accordance with the Act.

Specifically, qualified paid sick leave wages are capped at \$511 per day (\$200 per day if the leave is for caring for a family member or child) for up to 10 days per employee in each calendar quarter. The qualified emergency family leave wages are capped at \$200 per day for each individual up to \$10,000 total per calendar quarter.

The payroll tax credit will be increased to include money the employer pays towards the employee's health insurance coverage while the employee is out on either of the above two federal leaves. The tax credit cannot exceed the employer's total payroll tax burden on all employee wages.

Credit for Sick Leave for Self-Employed Individuals: A credit similar to the payroll credit for required paid sick leave described above is available for self-employed individuals. The credit is taken against self-employment tax.

While this Act is designed to provide immediate relief to employees through paid leave provisions and assist employers through tax credits, concerns remain for employers over potential cash flow issues that may emerge. Small businesses may be able to take advantage over certain emergency small business loans. Additionally Congress is seeking to try to provide additional stimulus relief.

Further developments are expected in the coming days and weeks. We will continue to provide you with alerts as they are released.

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