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Compliance Advisor

What every HR leader should know about compliance



Families First Coronavirus Response Act

Updated 3/26/2020

In response to the spread of the 2019 Novel Coronavirus (COVID-19), President Trump signed the [Families First Coronavirus Response Act](#) (Act) on March 18, 2020. The Act is an economic stimulus plan that affects coverage and cost sharing for COVID-19 testing and provides expanded federal family and medical leave and a new federal paid sick leave law. The Act also addresses other issues such as coverage and cost sharing for COVID-19 testing under Medicare and Medicaid, emergency grants to states for unemployment insurance, employer tax credits for compensation and amounts paid to maintain health coverage for employees who take leave under the Act, and federal funding for various programs.

The Department of Labor (DOL) issued [frequently asked questions](#) regarding the emergency family and medical leave and emergency paid sick leave portions of the Act. The DOL also released [employer](#) and [employee](#) fact sheets for the emergency family and medical leave and emergency paid sick leave portions of the Act.

Coverage for Testing for COVID-19

Until the end of the national emergency period, private group health plans (including insured, self-insured, and grandfathered plans) must provide coverage and not impose any cost sharing (including deductibles, copayments, and coinsurance), prior authorization, or medical management requirements for the following items and services:

- In vitro diagnostic products for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19 that have been approved, cleared, or authorized by the Federal Food, Drug, and Cosmetic Act, and the administration of such in vitro diagnostic products.
- Items and services furnished to an individual during health care provider visits that result in an order for or administration of an in vitro diagnostic product described above, but only to the extent that those items and services relate to the furnishing or administering the in vitro diagnostic products or to determine the need of the individual for such product.



Emergency Family and Medical Leave

The Act amends the Family and Medical Leave Act of 1993 (FMLA) to provide an additional qualifying reason for leave. The Act provides that eligible employees for FMLA leave includes employees that are unable to work (or telework) due to a need for leave to care for the employee's son or daughter under 18 years of age if the school or place of care has been closed or the childcare provider is unavailable due to a public health emergency (i.e., COVID-19). To be an eligible employee, the employee must have been employed for at least 30 calendar days by the employer. An eligible employer that is required to provide this leave is a private employer with fewer than 500 employees. However, public agencies must comply no matter what size.

The employee's first ten days of leave due to a public health emergency may be unpaid. The employee may elect to substitute accrued paid leave for the unpaid leave. The employee's leave will be paid leave after the first ten days. After the first ten days, the employee receives two-thirds of the employee's regular pay for the remaining period of leave based on the number of hours the employee would otherwise be normally scheduled to work. If an employer is unable to determine the number of hours the employee would have worked, the employer would use the average number of hours (including any periods of leave) that the employee was scheduled per day over the six-month period preceding the leave. If the employee did not work during this six-month period, the employer would use the reasonable expectation of the average number of hours the employee would normally be scheduled to work. Paid leave cannot exceed \$200 per day and \$10,000 in the aggregate.

Where necessity for leave due to a public health emergency is foreseeable, the employee must provide the employer with notice of the need for leave as soon as practicable.

The job reinstatement rights that apply when an employee returns from leave under traditional FMLA leave apply to leaves taken due to public health emergencies except that an employer with fewer than 25 employees may be excused from reinstating an employee's position if the following conditions apply:

- The position held by the employee when the leave began does not exist due to economic conditions or other changes in operating conditions of the employer
- The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave began, with equivalent employment benefits, pay, and other terms and conditions of employment
- If the reasonable efforts to restore the employee to an equivalent position fail, the employer must make reasonable efforts to contact the employee if an equivalent position becomes available within a one-year period beginning on the earlier of the date on which the reason for the leave due to public health emergency ends or 12 weeks after the date on which the public health emergency leave begins.

An employer that has employees who are health care providers or emergency responders may elect to exclude these employees from eligibility for the leave due to a public health emergency. Also, the Department of Labor (DOL) may exclude certain health care providers or emergency responders from eligibility for leave due to a public health emergency. The DOL may also exempt certain employers with fewer than 50 employees from providing leave due to a public health emergency if the requirements would jeopardize the viability of the employer.



The provisions detailed above regarding FMLA leave due to a public health emergency take effect on April 1, 2020, and will be in effect until December 31, 2020.

Emergency Paid Sick Leave

The Act requires private employers with fewer than 500 employees (public agencies must comply no matter what size) to provide paid leave (paid sick leave) due to the employees' inability to work (or telework) because:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis
4. The employee is caring for an individual who is subject to an order as described in number 1. or has been advised as described in number 2.
5. The employee is caring for his or her son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of the son or daughter is unavailable, due to COVID-19 precautions
6. 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

Full-time employees are entitled to 80 hours of paid sick leave. Part-time employees are entitled to a number of hours equal to the number of hours that the employee works on average over a two-week period. If an employer is unable to determine the number of hours the employee would have worked, the employer would use the average number of hours (including any periods of leave) that the employee was scheduled per day over the six-month period preceding the leave. If the employee did not work during this six-month period, the employer would use the reasonable expectation of the average number of hours the employee would normally be scheduled to work. Paid sick leave will stop, beginning with the employee's next work shift immediately following the termination of the need for paid sick leave. Paid sick leave cannot carry over from one year to the next. An employer cannot require an employee to use other paid leave provided by the employer before the employee uses the paid sick leave.

Compensation during paid sick leave shall not exceed \$511 per day and \$5,110 in the aggregate for reasons 1 through 3 listed above. Compensation shall not exceed \$200 per day and \$2,000 in the aggregate for reasons 4 through 6 listed above. Compensation for caring for others (that is, items 4 - 6 listed above) shall be at two-thirds of the employee's regular compensation, not to exceed the compensation cap.

Employers must post a [notice](#) provided by the DOL on the premises of the employer where notices to employees are generally posted.

An employer with employees who are health care providers or emergency responders may elect to exclude such employees from eligibility for the paid sick leave. Also, the DOL may exclude certain health care providers or emergency responders as employees from eligibility for the paid sick leave. The DOL



may also exempt certain employers with fewer than 50 employees from providing the paid sick leave due to item 5 in the list above if the requirements would jeopardize the viability of the employer.

The provisions regarding paid sick leave take effect on April 1, 2020, and will be in effect until December 31, 2020.

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You should not act on this information without consulting legal counsel or other knowledgeable advisors.