

Families First Coronavirus Response Act

The Families First Coronavirus Response Act was signed into law on March 18, 2020.

In the coming days and weeks, federal regulatory agencies, including the Department of Labor (DOL) and Health and Human Services (HHS), will provide guidance on how to execute or implement the new requirements. In the meantime, employers and advisors must rely on a good faith interpretation of the act's text.

Note: We are sharing everything we know below and will not be able to answer follow up questions about the act until agency guidance has been released, which will take some time. We will update you as more information becomes available via email and our [COVID-19 Resource Page](#) will be updated with any new information as it is released.

Summary

Employees will be eligible for two weeks of sick leave (full pay for self, 2/3 pay for family care) and use of 12 weeks of Family and Medical Leave Act (FMLA) leave (10 days unpaid and then up to 10 weeks at 2/3 pay) for several circumstances related to COVID-19.

Effective Date of Law

- **The FMLA and Paid Sick Leave sections discussed below will go into effect on April 2, 2020 and expire December 31, 2020.**
- It appears there is no retroactive application.

Key Elements for Employers

- FMLA expansion
- Paid sick leave
- Payroll tax credit
- Group health plan benefit mandate

Emergency FMLA Expansion

- **Covered Employers:** Employers with fewer than 500 employees are covered.
- **Covered Employees:** Any employee who has been employed for at least 30 calendar days, though employers can choose to exclude employees who are health care providers or emergency responders.
- **Covered Leave Purposes:** To care for a child under 18 of an employee if the child's school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency,

defined as an emergency with respect to the coronavirus declared by a federal, state, or local authority.

- **Duration:** Up to 12 weeks of job-protected leave.
- **Compensation:**
 - No pay for first 10 days of leave (employee can, but is not required, to use any other leave available to them, including the emergency sick leave discussed below). Employers may not require employees to use paid leave during this period.
 - After 10 days, employers must pay two thirds of the employee's regular rate of pay for the number of hours they would normally be scheduled to work, capped at \$200/day and \$10,000 total.
- **Reinstatement to Position after Leave:**
- The same reinstatement provisions apply as apply under the traditional FMLA. However, restoration to position does not apply to employers with **fewer than 25 employees** if certain conditions are met:
 - The job no longer exists because of changes affecting employment caused by an economic downturn or other operating conditions that affect employment caused by a public health emergency, subject to the following conditions:
 - The employer makes reasonable efforts to return the employee to an equivalent position, and
 - The employer makes efforts to contact a displaced employee if anything comes up within a year of when they would have returned to work.

Note: Employers covered here but not by the rest of the FMLA (i.e. those with fewer than 50 employees) are not subject to civil action by employees (only action by the Secretary of Labor). The act reserves the right for the Secretary to exclude certain care providers and first responders from the list of "eligible employees" and exempt small businesses with fewer than 50 employees if business viability was jeopardized.

Emergency Paid Sick Leave

- **Covered Employers:** Employers with fewer than 500 employees.
- **Covered Employees:** All employees (no matter how long they have been employed). Employees who are health care providers or emergency responders may be excluded.
- **Covered Leave Purposes:**
 1. When quarantined or isolated subject to federal, state, or local quarantine/isolation order;
 2. When advised by a health care provider to self-quarantine (due to concerns related to COVID-19);
 3. When experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 4. When caring for an individual doing #1 or #2 (2/3 pay);
 5. When caring for a child whose school or place of care is closed due to COVID-19 (2/3 pay); or
 6. When the employee is experiencing any other substantially similar condition (2/3 pay).

Duration of Leave:

- Full time employees are entitled to 80 hours of paid sick leave.
- Part time employees are entitled to sick leave equal to the amount of hours worked on average over a typical two-week period.

Rate of Pay:

- Sick leave must be paid at the employee's regular rate of pay for leave used for the employee's own illness, quarantine, or care.
- Sick leave must be paid at two-thirds of the employee's regular rate if taken to care for a family member or to care for a child whose school has closed, or if the employee's childcare provider is unavailable due to the coronavirus.
- Pay is capped at \$511/day and \$5,110 total for reasons 1, 2, and 3 described above.
- Pay is capped at \$200/day and \$2,000 total for reasons 4, 5, and 6 described above.

Interaction with Other Employer-Provided Paid Sick Leave and other Paid Leave:

- This act does not pre-empt existing state and local paid sick leave requirements.
- Employers cannot require employees to use other leave first.
- Sick leave provided for under the act does not carry over from year to year, and the requirements expire December 31, 2020.

Notice Requirements:

- Employers must post a model notice, which will be provided by the federal government.

Note: The act reserves the right for the Secretary to exclude certain care providers and first responders from the list of "eligible employees" and exempt small businesses with fewer than 50 employees if business viability was jeopardized.

Payroll Tax Credit

- Applies to both the emergency FMLA expansion and the emergency sick leave.
- Dollar for dollar credit for sick leave and paid FMLA wages against the employer portion of Social Security taxes.
- Refund is possible for amounts that exceed what is available as a credit.
- Limits on what can be claimed mirror the caps for what must be paid.

Health Plan Benefit Mandate

- The act requires all insured and self-funded medical plans, including grandfathered plans, to cover diagnostic testing-related services for COVID-19 at 100 percent without any deductibles or co-pays.
- Examples include services provided by doctors, emergency rooms, and urgent care centers leading up to the decision that testing is needed, along with the actual lab-based testing.
- The mandate does not apply to treatment.

*Information in this document is general in nature and not intended to replace legal advice in any particular manner.