



FAMILY FIRST CORONAVIRUS RESPONSE ACT IS ENACTED

President Trump signed the Family First Coronavirus Response Act (The Act or FFCRA), which provides temporary, emergency action in response to the COVID-19 outbreak.

Insperty shares your sense of urgency regarding this new law, which goes into effect 15 days or sooner from when the bill was passed, March 18, 2020. At the latest, that date is April 2, 2020. The Act temporarily expands the federal Family and Medical Leave Act (FMLA) on an emergency basis, provides federally mandated paid sick leave, expands unemployment insurance benefits, and provides tax credits for certain costs related to implementation of this law.

Reading time: 3-5 minutes

Application of New Benefits

It is important to understand that there are three primary benefit areas for employees under this law.

1. Emergency expansion to the FMLA
2. Emergency federal paid sick leave
3. Expansion of unemployment benefits

We have identified each area below:

Emergency FMLA Expansion Act

The Emergency Family and Medical Leave Expansion Act requires certain employers to provide 12-weeks of paid, emergency job protected leave.

Definitions

- “Eligible employee” is any employee who:
 - Works for an employer with less than 500 employees,
 - Has been employed with that employer for at least 30 days, and
 - Has a qualifying reason for leave, as identified below
- “Parent” has been expanded to include:
 - Parent-in-law of the employee,
 - A parent of a domestic partner of the employee
 - A legal guardian or other person who served *in loco parentis* when the employee was a child.

Coverage and Use

- All employers with fewer than 500 employees must comply with Emergency FMLA requirements.
- Eligible employees may receive job-protected leave to care for the employee’s child (younger than 18 years old) if the child’s school or place of care has been closed resulting from a public emergency.

Paid Leave under the Emergency FMLA Expansion Act

- Emergency FMLA has a 10-day elimination period, during which employee pay is not required to be continued.
 - Employees may choose to use their accrued time off, including paid sick, vacation, or PTO to cover some or all this time
- Following the elimination period, covered employers must continue a full-time employee’s pay at two-thirds (2/3) the employee’s regular rate of pay for the employee’s normal scheduled hours.
 - The maximum amount of pay an employee may receive is \$200 per day, or \$10,000 total
- Part-time or irregularly scheduled employees are entitled to receive pay based on the average number of hours worked the 6-month period prior to taking Emergency FMLA.
 - Employees who have not been employed for 6 months prior to qualifying for Emergency FMLA are entitled to pay for the number of hours per week the employee reasonably expected to work at the time they were hired.

Job Restoration

The Emergency FMLA law requires employers with 25 or more employees to comply with the same reinstatement requirements for employees who take Emergency FMLA leave as traditional FMLA requires.

Employers with fewer than 25 employees generally do not have to comply with this requirement if the position the employee held no longer exists because of an economic downturn, or other related circumstance that resulted from the public health emergency coinciding with the enactment of Emergency FMLA.

Exemptions

Through this Act, authority is provided to the Secretary of Labor to issue subsequent regulations to exempt some small businesses with fewer than 50 employees. If acted upon, these exemptions would be available to qualifying employers who can show that providing emergency FMLA benefits and paid sick leave, as required under this Act, would jeopardize the viability of the organization.

Certain healthcare providers (as defined in the federal Family and Medical Leave Act) and emergency responders may also be provided exclusions from the definition of “eligible employee.”

Effective Date and Duration

- This bill will become effective within 15 days or sooner of its enactment, which was March 18, 2020.
- The expiration of this bill is scheduled for December 31, 2020

Emergency Paid Sick Leave Act

It is important to note that this section of the Act is not under the FMLA. The Act requires employers with fewer than 500 employees to provide full-time employees with paid sick leave, regardless of the duration of employment prior to leave.

Employers may not alter their current sick leave policy after the enactment of this law to avoid complying with this component of the Act.

Sick time provided under this component of the law may be applied to the 10-day elimination period under the Emergency FMLA expansion.

Sick Pay

Employers are required to provide employees with 80 hours of sick pay at the employee’s regular rate of pay for absences related to:

- Compliance with a federal, state, or local quarantine or isolation order,
- Advised by a health care provider to self-quarantine because of COVID-19, or
- Exhibiting other symptoms consistent with COVID-19 and seeking medical advice.

Employers are required to provide the same 80 hours of sick leave to employees, but may pay employees at two-thirds (2/3) of their regular rate of pay for absences related to:

- Care for an individual who is:
 - Quarantined or self-isolating because of a federal, state, or local order, or
 - Advised by a health care provider to self-quarantine because of COVID-19, or
 - Exhibiting other substantially similar conditions, identified by the Secretaries of Health and Human Services, Treasury, and Labor.
- Care of an employee’s child if a child’s school or place of care has been closed resulting from a public emergency.

An exception to this section applies to employers who are health care providers (as defined in the federal Family and Medical Leave Act), or emergency responders.

Notification of Need for Leave

Employers may require employees who receive paid sick leave in connection with this Act, to “follow reasonable notice procedures in order to continue receiving such paid sick time.” Employees receiving such paid sick leave benefits must comply with the employer’s notice procedure following the first full or partial workday using paid leave benefits.

Carryover

Emergency paid sick leave does not carry over to the following year and must be provided in addition to any paid sick leave the employer currently provides.

Rate of Pay

Part-time or irregularly scheduled employees are entitled to receive sick leave pay based on the average number of hours worked the 6-month period prior to taking paid sick time.

- Employees who have not been employed for 6 months prior to taking paid sick time are entitled to the average number of hours the employee would normally be scheduled over a two-week period.

Pay Limits

Paid sick leave benefits are limited to payments of up to \$511 per day, or \$5,110 in total per employee for their own use, and \$200 per day, or \$2,000 in total when an employee cares for other individuals and other substantially similar circumstance.

Emergency Unemployment Insurance Stabilization and Access Act of 2020

The Act provides funding under certain circumstances, for states’ unemployment insurance activities related to payment and processing of claims. Employers will be required to notify impacted employees of the availability of unemployment benefits at the time at which they are separated from employment.

Tax Credits

The Act provides tax credits for employers who incur certain costs associated with the implementation of this law. At this time, Insperity is investigating methods to identify payments made for anticipated tax-specific payments.

Insperity is following this important development and will continue to bring you updates as more information is available.

Steps Employers Should Take for Compliance

Notice Requirements

Employers are required to post a notice displaying the requirements of the law. The required posting will be provided by the Secretary of Labor within 7 days of the law’s enactment.

Employers should prepare to comply with this law by reviewing their paid sick, vacation, and paid time off plans and notifying employees of the increased temporary benefits.

Employers may deny emergency FMLA or emergency paid sick leave if the employee is available to telework.

Employers who feel that they may qualify for an exemption should contact outside counsel.

Insperity is here to help

Your Insperity HR professional will work with you to help you. As always, we are pleased to be of service and are dedicated to helping you reduce liabilities and to proactively manage employer responsibilities.