

The Families First Coronavirus Response Act

Yesterday, March 18, 2020, Congress passed, and President Trump signed into law, the Families First Coronavirus Response Act, that provides many American workers up to 12 weeks of paid FMLA leave and two weeks of paid sick leave for certain reasons related to COVID-19. Employers are required to pay these amounts to eligible employees, and employers would be eligible for a tax credit on the amounts paid. We have included below some basic information on the new law.

Emergency Family and Medical Leave Expansion Act

What is the Effective Date? The new law is effective not later than 15 days after it is enacted and sunsets on December 31, 2020.

Who is a Covered Employer? An employer with fewer than 500 employees. The DOL has authority to issue regulations to exempt small businesses with fewer than 50 employees when the law's requirements would jeopardize the viability of the business.

Who is an Eligible Employee? Any full-time or part-time employee that has been on the employer's payroll for 30 days.

What are the Reasons for FMLA leave? An eligible employee may take FMLA leave under this Act 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 coronavirus related reason, and the employee is unable to work or telework.

What Portion is Paid Leave? The first 10 days of leave may be unpaid, but an employee can choose to substitute accrued vacation leave, personal leave, or other medical or sick leave during the leave. After 10 days, employers must pay for FMLA leave (only for the reason above) at no less than two-thirds the employee's regular rate of pay for the number of hours the employee would have been normally scheduled to work. The FMLA benefit is capped for an individual at \$200 per day or \$10,000 in the aggregate.

Does the Employee Have to Be Restored to their Position? An employer must return the employee to the same or equivalent position upon their return to work. There is an exception to this requirement for employers with fewer than 25 employees if (subject to certain conditions) the employee's position does not exist after FMLA leave due to an economic downturn or other operating conditions that affect employment caused by a public health emergency during the period of leave.

Emergency Paid Sick Leave Act

What is the Effective Date? The Act is effective not later than 15 days after it is enacted and sunsets on December 31, 2020.

Who is a Covered Employer? Employers with fewer than 500 employees must provide employees with two weeks of paid sick leave. The DOL has the authority to exempt small businesses with fewer than 50 employees when the requirements would affect the viability of the business.

What are the Reasons for Sick Leave? An employee may take sick time if unable to work or telework for one of the following reasons related to COVID-19:

Employee is subject to a federal, state, or local quarantine or isolation order;

- Employee is subject to a federal, state, or local quarantine or isolation order;
- Employee has been advised by a healthcare provider to self-quarantine;
- Employee is experiencing symptoms and seeking a medical diagnosis;
- Employee is caring for an individual who (#1) is subject to quarantine or who (#2) has been advised to self-quarantine;
- Employee is caring for the child of such employee if the school or childcare has been closed; or
- Employee is experiencing any other substantially similar condition as designated by HHS.

What Amount Must be Paid? Employers must pay eligible employees the following:

- Full-time employees: 80 hours at their regular rate of pay. However, when caring for a family member (last three bullets above), sick leave is paid at two-thirds the employee's regular rate.
- Part-time employees: the same approach as full-time employees, except the number of hours that the employee works, on average, over a two-week period.

The sick pay is capped at \$511 a day (\$5110 aggregate) for self-care (items 1-3 above) or \$200 a day (\$2000 aggregate) for care for others (items 4-6 above).

Are the Two Weeks of Paid Sick Leave in Addition to PTO that An Employer Provides? It appears so as the law states that paid sick leave shall not diminish the rights an employee has under any other federal, state, or local law, under a collective bargaining agreement, or an existing employer policy. Also, an employer may not require an employee to use other paid leave before the employee uses the paid leave under this bill.

Are there any Retaliation Provisions? The law includes anti-retaliation protections for employees and provides that the failure to pay sick pay is treated as a violation of a failure to pay minimum wage.

Tax Credits for Emergency Paid Sick Leave and Family and Medical Leave

The new law provides a refundable tax credit for employers equal to 100 percent of paid sick leave wages and 100 percent of paid FMLA. The tax credit is allowed against the employer portion of Social Security taxes. If the credit exceeds the employer's total liability under section 3111(a) for all employees for any calendar quarter, the excess credit is refundable to the employer. Sick pay or FMLA pay are not wages for the purposes of the employer portion of FICA.

(provided by Carmody, Torrance, Sandak and Hennessey)