



## Families First Coronavirus Response Act

Employers need to be aware of the changes to federal employment law effective April 2, 2020 concerning new paid sick leave requirements and expansion of the Family and Medical Leave Act (FMLA). This Act, the Families First Coronavirus Response Act affects all employers with fewer than 500 employees (FFCRA) and most public employees.

### Employer Eligibility

At present, the FFCRA applies to private employers **with fewer than 500 employees**, and most public employers.

For many smaller employers, the FFCRA could introduce FMLA coverage into your workplace for the first time. Prior to this law, FMLA only applied to employers with more than 50 employees. FFCRA does not limit its coverage to employers with more than 50 employees so all employees may be subject to FMLA through the new FFCRA. The FFCRA allows the U.S. Department of Labor to issue regulations to *exclude* emergency responders and/or businesses with less than 50 employees where the requirements "would jeopardize the viability of the business as a going concern." However, at this time, The U.S. Department of Labor has not issued any exclusions.

### Cost Mitigation: Tax Credits

To help offset the cost of this required paid leave, the Act provides for credits against quarterly payroll taxes imposed on the employer in an amount equal to 100 percent of the qualified family leave wages and paid sick leave wages paid by an employer, subject to the requirements of forthcoming Treasury Department regulations.

### Two Main Provisions Under the FFCRA: Child Care/FMLA and Emergency Leave

Employers are required to give employees two types of paid leave when employees must miss work because of the COVID-19 outbreak: (1) FMLA related to an employee's care of a child, and (2) emergency sick leave for employees who cannot work because the employee meets one of the six separate categories described below.

### Emergency Family and Medical Leave Expansion

**Employee Eligibility:** The Act will apply to *any* employee who has worked for the employer for at least 30 days prior to the designated leave.

**Reasons for Emergency Leave:** Any individual employed by the employer for at least 30 days may take up to **12 weeks of job-protected leave** to allow an employee, *who is unable to work or telework*, to care for the employee's child (under 18 years of age) if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency.

**Paid Leave:** The first ten days of such leave are unpaid under the Act, though an employee may elect to use existing accrued paid leave (like vacation or sick leave) to cover some or all of the 10-day unpaid period.



After the 10-day period, the employer generally must pay full-time employees **at two-thirds the employee's regular rate** for the number of hours the employee would otherwise be normally scheduled. The FFCRA does not require employers to exceed a rate of pay equal to \$200 per day and \$10,000 in the aggregate per employee. Nothing in the FFCRA prohibits employers from going beyond these limits in compensating their employees, but the employer may not be eligible for tax deductions under the FFCRA beyond the limits.

**Calculating Pay for Non-Full Time Employees:** Employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking Emergency FMLA. Employees who have worked for less than six months prior to leave are entitled to the employee's reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.

**Job Restoration:** Employers with 25 or more employees will have the obligation to return any employee who has taken Emergency FMLA to the same or equivalent position upon the return to work. However, employers with fewer than 25 employees are generally excluded from this requirement if the employee's position no longer exists following the Emergency FMLA leave, due to an economic downturn or other circumstances caused by a public health emergency during the period of Emergency FMLA.

## Emergency Paid Sick Leave Act

**An employer must allow** an eligible employee to take paid sick leave when the employee is:

1. subject to a Federal, State or local quarantine or isolation order related to COVID-19;
2. advised by a health care provider to self-quarantine due to COVID-19 concerns;
3. experiencing COVID-19 symptoms and is seeking medical diagnosis;
4. caring for *an individual* subject to a Federal, State or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
5. caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to COVID-19 precautions; or
6. 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.

**Employee Eligibility:** This provision requires employers to provide *full-time employees* (regardless of the employee's duration of employment prior to leave) with **80 hours of paid sick leave at the employee's regular rate** when the employee is subject to any of the qualifying reasons contained in 1, 2 or 3 above (i.e., the employee is the individual subject to quarantine or isolation). The employer is required to provide 80 hours of sick leave at two-thirds the employee's regular rate to **care for others** as set forth in qualifying reasons 4, 5, or 6 listed above.

**Cap on Paid Sick Leave Wages:** Another significant change in this Act is that employers are only required to pay an employee \$511 per day, up to \$5,110 total per employee when the employee is the affected individual, and \$200 per day up, to \$2,000 total to care for others and if they are experiencing any other substantially similar condition. Nothing prohibits an employer from paying an employee at a higher rate for paid sick leave, but the FFCRA does not require employers to pay higher rates and there could be a limit on the tax deduction available under the FFCRA.



**Notice Requirements:** We expect that the Department of Labor will shortly issue notices for the new Act which will have to be posted in your workplace and distributed to employees.

### **Important Compliance Guidelines**

This is a federal law and it will also be important for employers to monitor whether state or local governments issue new workplace laws/regulations.

Likewise, in this rapidly-changing environment, employers ought to pay close attention to, and follow, any new directives or mandatory instructions from Federal, State or local authorities related to COVID-19.

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