

FAMILIES FIRST CORONAVIRUS RESPONSE ACT: PAID MEDICAL LEAVE AND PAID SICK LEAVE FOR EMPLOYEES

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On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act ("the Act"), which requires employers with fewer than 500 employees to provide paid leave for specified reasons related to COVID-19. The Act will take effect April 1, 2020, and will expire on December 31, 2020.

Families First Coronavirus Response Act

FFCRA contains two separate, but related provisions:

- First, it requires covered employers to provide emergency paid leave to employees in certain situations.
- Second, the Act expands the coverage of the Family and Medical Leave Act (FMLA) to specific reasons related to the COVID-19 pandemic.

The Emergency Paid Sick Leave Act ("EPSLA")

With respect to the emergency paid leave provisions, the Act requires that **employers with fewer**

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than 500 employees give employees, regardless of the length of time that they have been employed by the company, **80 hours of paid leave** if the employee is unable to work or “telework” for specified COVID-19 reasons.

The Secretary of Labor will issue regulations excluding certain health care providers and emergency responders from the Act, and the Secretary of Labor may exempt small businesses with fewer than 50 employees if the paid-leave mandate “would jeopardize the viability of the business as a going concern.”

Paid-Leave Provisions

Absent one of the foregoing exemptions, the paid-leave provisions apply to any employee who:

1. has symptoms of COVID-19 and is seeking a medical diagnosis;
2. is subject to a governmental quarantine or isolation order related to COVID-19;
3. has been advised by a health care provider to self-quarantine because of COVID-19-related concerns;
4. is caring for someone (it need not be a family member) in quarantine due to a governmental quarantine or isolation order, or has been ordered to self-quarantine by a health care provider due to COVID-19 concerns;
5. is caring for a son or daughter if the son or daughter’s school or place of childcare has been closed; or
6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, the Secretary of the Treasury, and/or the Secretary of Labor.

Full-time employees **are entitled to 80 hours** of COVID-19-related paid leave and part-time employees are entitled to paid leave in an **amount equal to the number of hours** that the employee works on average over a two-week period.

Rate of Compensation

The rate of compensation, however, differs depending upon the reason for the leave.

- Employees with symptoms of COVID-19 or who are themselves subject to quarantine are entitled to their regular rate of pay up to a cap of \$511 per day.
- Employees who take leave to care for others or their children are entitled to be paid at two-thirds of their regular rate of pay up to a cap of \$200 per day.

The Act **prohibits employers from requiring an employee to use other paid leave prior to using COVID-19 paid leave** under the Act and from requiring an employee to find another employee to provide coverage for him or her while using COVID-19 paid leave.

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The Emergency Family and Medical Leave Expansion Act (“EFMLEA”)

In addition to the foregoing paid leave provisions, the Act adds the COVID-19-related closure of schools or childcare facilities to the reasons why leave may be taken under the FMLA and adds a paid leave mandate pertaining to such leave until the end of the year.

FMLA Expansion Act

Under the “FMLA Expansion Act”, an employee may take leave under the FMLA if:

- the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of whose school or place of child care has been closed; or
- the child care provider of such son or daughter is unavailable, due to an emergency with respect to COVID-19 declared by a federal, state or local authority.

Unlike the FMLA in general, which applies only to employers with 50 or more employees, this section is altered to **include all employers with fewer than 500 employees**. As a result, it will cover small employers who would not otherwise be subject to the FMLA.

- The FMLA expansion provides that the first 10 days are unpaid.
- The employee can choose to substitute paid leave (including the emergency paid leave referenced above), or an employer **may require the substitution of paid leave**.
- Furthermore, after the first 10 days of unpaid leave, unlike other types of FMLA leave, additional leave up to 12 weeks must be paid.
- The amount of pay must be at least two-thirds of the employee's regular rate of pay, up to a maximum of \$200 per day.

Like the emergency paid leave provisions of the Act, the Secretary of Labor will issue regulations **exempting certain health care providers, emergency responders and small businesses** with fewer than 50 employees if the leave mandate “would jeopardize the viability of the business as a going concern.”

Pursuant to the terms of the Act, **employers are required to post a notice informing employees of their rights under the Act**. The Act requires the Secretary of Labor to make a model notice of employees' rights under the Act to be posted by employers subject to the Act.

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