



March 20, 2020

RE: Summary of Families First Coronavirus Response Act

The measures being implemented by federal, state and local authorities to address the Coronavirus (COVID-19) public health emergency are developing and changing rapidly. Just yesterday, President Trump signed the Families First Coronavirus Response Act (FFCRA) into law. This broad-ranging statute imposes a number of new obligations on employers. The following is a brief summary of the provisions of the FFCRA most relevant to employers.

Paid Family and Medical Leave. The FFCRA temporarily expands the federal Family and Medical Leave Act (FMLA) to allow coverage for a “qualifying need related to a public health emergency” and requires employers to pay a portion of employee wages while on such leave. This paid leave requirement applies to employees who cannot work (or telework) due to a need to care for a child (under 18 years of age) whose school or place of care has been closed, or whose childcare provider is unavailable due to the COVID-19.

The following are the significant provisions related to the FFCRA’s Paid FMLA requirements:

- **Covered employees.** Paid FMLA will be available to any employee who has worked 30 or more days for their employer.
- **Covered employers.** Paid FMLA requirements apply to employers with fewer than 500 employees. Employers with fewer than 50 employees can apply for a waiver with the Secretary of Labor if the requirements of the law would “jeopardize viability of the business as a going concern.”
- **Unpaid period.** The first 10 days of such leave are unpaid. Employees are free to use PTO, sick leave and other paid leave during this time period.
- **Paid leave.** Thereafter, employers must provide two-thirds of the employee's regular rate of pay, capped at \$200 a day (\$1000 a week). The maximum aggregate amount of paid FMLA to any employee is \$10,000 (or 10 weeks for a full-time employee receiving the full \$200 per day).
- **Notice requirement.** Where necessity for leave is foreseeable, employees must provide their employer with as much notice of leave as practicable.

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- Qualifying use. As noted above, the paid FMLA requirements apply only to employees who cannot work (or telework) due to need for leave to care for a child if their school or place of care is closed or unavailable due to a COVID-19.
- Job restoration. Job restoration requirements for paid FMLA apply to employers with 25 or more employees. Job protection requirements do not apply if the position no longer exists due to economic conditions or other changes in operations caused by COVID-19 during the period of leave. But, in such case, the employer must make "reasonable efforts" for the following year to contact the employee if an equivalent position does become available.

These requirements take effect April 2, 2020 (15 days after enactment) and expire December 31, 2020.

Paid Sick Leave: The FFCRA also requires employers to provide paid sick leave to employees unable to work due to COVID-19-related reasons. These include where:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who:
 - a. is subject to an order to quarantine or isolation related to COVID-19 or,
 - b. has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
5. The employee is caring for a son or daughter whose school or place of care has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

The following are the significant provisions related to the FFCRA's paid sick leave requirements:

- Sick leave hours. Fulltime employees qualify for 80 hours of paid leave (pro-rated for part time employees).
- When useable. Immediately upon existence of qualifying reason, “regardless of how long the employee has been employed by the employer.”
- Carry over. Paid sick time under this law will not carry over into next year.
- Covered employers. Any private entity with fewer than 500 employees, and any public agency or other entity that is not a private entity that employs 1 or more employees. Employers with fewer than 50 employees can apply for an exemption with the Secretary of Labor if these paid sick leave requirements would “jeopardize the viability of the business as a going concern.”
- Paid sick time. Employees must be paid their regular rate of pay up to
 - \$511 per day (\$5,110 in the aggregate) for reasons (1) – (3) listed above or
 - \$200 per day (\$2,000 in the aggregate) for reasons (4) – (6) listed above.
- Interaction with other leave. An employer may not require an employee to use other paid leave provided by the employer before the employee uses the paid sick time under this law.
- No continuing benefits after termination. There is no obligation for an employer to provide financial or other reimbursement to an employee for unused sick leave at the time of the employee’s termination or separation.

These requirements also take effect April 2, 2020 and expire December 31, 2020.

Employer Tax Credits. These paid leave requirements are initially born by employers. But the FFCRA provides for quarterly tax credits compensating employers for this burden. The following is a summary of the tax credits provided under the FFCRA:

- For each calendar quarter, employers may obtain a payroll tax credit “equal to 100 percent of the qualified sick leave wages paid by such employer” for that calendar quarter. This credit will not exceed \$200 (or \$511 as applicable) for any day a qualified individual is paid sick leave wages, up to 80 hours total.

- For each quarter, employers may also obtain a payroll tax credit “equal to 100 percent of the qualified family leave wages paid by such employer” for that calendar quarter. This credit will not exceed \$200 per day (up to a \$10,000 maximum).
- These tax credits may also be increased by the employer’s “qualified health plan expenses ... properly allocable” to “qualified sick leave wages” and/or “qualified family leave wages” as applicable.
- The credit is refundable if it exceeds the amount the employer owes in payroll tax for all employees for a given quarter.
- The FFCRA’s tax credits do not apply to State or political subdivisions, or any agency or instrumentality thereof.