

Monthly Minute Memo: *Trump signs into law the Families First Coronavirus Response Act*

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (the “Act”). This new law requires certain employers to provide emergency paid leave under the Family and Medical Leave Act and emergency paid sick leave. From an employer-employee relationship perspective, there are two main issues: (1) additional FMLA leave entitlement; and (2) paid sick day requirements. This law takes effect April 2, 2020 and expires on December 31, 2020.

I. EMERGENCY FAMILY AND MEDICAL LEAVE ACT

Covered Employer: Any private employer with less than 500 employees. This expands coverage from the previous definition of employer of 50 or more employees within a 75-mile radius to all employers with less than 500 employees. Public agencies (of any size) also are covered, as they were under the original FMLA.

Eligible Employee: Any full or part-time employee on the employer’s payroll for at least 30 calendar days. The law provides some exemptions for employees who are health care providers or emergency responders.

Reasons for FMLA Leave: This Act adds a new section to FMLA that allows eligible employees to take up to 12 weeks of FMLA leave for a qualifying need related to a public health emergency. This qualifying need is limited to circumstances where an employee is unable to work, including remotely, to care for a minor child if the child’s school or place of childcare has been closed or is unavailable due to a public health emergency.

Is This Leave Paid?

- The first 10 days are unpaid, but an employee can substitute accrued paid leave, including 80 hours for full time employees (at 2/3 of the employee’s regular rate) under the Emergency Paid Sick Leave Act, which is discussed below.
- The remaining 10 weeks are paid at 2/3 of the employee’s regular rate, for the number of hours the employee would otherwise be scheduled to work (with a maximum payment of \$200 per day and \$10,000 total, per employee).

Return to Work Following Leave: Emergency FMLA leave is job-protected, similar to standard FMLA leave. Thus, following emergency FMLA leave, the employer must restore an employee to the same or equivalent position upon their return to work. However, the new law excludes

employers with fewer than 25 employees, if the employee's position no longer exists following leave due to operational changes occasioned by a public health emergency (e.g., a change in financial position, a downturn in business caused by the COVID-19 pandemic), subject to certain conditions and certain follow up requirements within the next year.

Exception for small businesses: This Act gives the Secretary of Labor the ability to issue regulations to exempt small businesses with fewer than 50 employees from this Act when the imposition of such requirements would jeopardize the viability of the business. At this time, the Secretary of Labor has not yet issued regulations or taken any action.

Collective Bargaining Agreements: While employees under a collective bargaining agreement are covered under the Act, there are provisions for negotiating with the union on how these employees will be paid.

II. EMERGENCY PAID SICK LEAVE ACT

Covered Employers: Any of the following:

- A private employer with *fewer* than 500 employees.
- A public agency (federal/state governments, political subdivisions, schools).
- Any other entity that is not a private entity.
- Anyone acting directly or indirectly in the interests of the employer.

Eligible Employees: Unlike the emergency FMLA requirements, an employee is immediately eligible for paid sick leave (there is no 30-calendar day requirement).

Reasons for Sick Leave: Employers are required to provide paid sick leave to an employee who is unable to work or telework because:

- the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- the employee has been advised by a health care provider to self-quarantine because of COVID-19;
- the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- the employee is caring for an individual who is subject or advised to quarantine or isolate;
- the employee is caring for a son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions; or
- the employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

How Much Paid Leave is Required? Eligible employees are entitled to the following:

- Full-time employees: 80 hours at their regular rate of pay.

- Part-time employees: the number of hours that the employee works, on average, over a 2-week period.
- If leave was taken due to an employee's own illness or quarantine, leave is paid at the employee's regular rate of pay. This leave is limited to \$511 per day (\$5,110 in total).
- If leave was taken to care for others or school closures, leave is paid at 2/3 of the employee's regular rate of pay. This leave is limited to \$200 per day (\$2,000 in total).

Sequence of and Rules for Leave: Employers must allow the employee to first use sick leave provided for under this sick leave law, then decide to use any remaining accrued paid leave under an employer's policy. The employer cannot require the employee to use accrued leave under an employer policy first.

Exception for small businesses: This Act gives the Secretary of Labor the ability to issue regulations to exempt small businesses with fewer than 50 employees from this Act when the imposition of such requirements would jeopardize the viability of the business. At this time, the Secretary of Labor has not yet issued regulations or taken any action.

Any paid leave provided by an employer before the law is effective cannot be credited against the employee's paid leave entitlement. As with most laws, an employer cannot retaliate against an employee for exercising his or her rights under the new law. The new law does provide some tax relief for employers. Those provisions are not addressed in this article.

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