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# *The Families First Coronavirus Response Act: What Employers Need to Know*

March 19, 2020

On March 18, President Trump signed into law a massive \$100 billion relief package aimed at helping Americans in the wake of the coronavirus (COVID-19) outbreak. In addition to providing funding for free COVID-19 testing, food security programs, and unemployment benefits, the Families First Coronavirus Response Act makes significant changes to the Family Medical Leave Act (FMLA), mandating that employers with fewer than 500 employees provide paid Emergency Sick Leave and Emergency Family Medical Leave to qualifying employees.

## **When will the law take effect?**

Both the family medical leave and the paid sick leave provisions of the law take effect on April 2 and continue through the end of the calendar year.

## **Which employers are impacted?**

Both provisions of the law apply to private employers with fewer than 500 employees. This includes employers with fewer than 50 employees who are not “covered employers” for purposes of the FMLA. The Department of Labor has the authority to exempt a small employer (fewer than 50 employees) from the Emergency Family Medical Leave requirements where granting such leave would threaten the viability of the employer’s business.

## **What are the new benefits for employees?**

### *Emergency Family and Medical Leave*

Under the new law, an employee who has worked for a covered employer for at least 30 days is eligible to receive Emergency Family Medical Leave. An employee may take up to 12 weeks of leave if the employee is unable to work (including telework) because they need to care for their child whose school or daycare has been closed, or childcare is otherwise unavailable, due to the COVID-19 outbreak.

The first 10 days of this leave may be unpaid. However, an employee may choose to use accrued PTO during this time. After the initial 10-day period, an employee must be paid for every hour of missed work at a rate of 2/3 their regular pay, not to exceed \$200 per day or \$10,000 in total.

Employees should provide notice of their intention to take this leave where possible.

Generally, employees must be restored to their former position when they return to work, but the protection does not apply for employers with fewer than 25 employees where the returning employee's position no longer exists and, after a reasonable effort, the employer could not find an equivalent position.

### *Emergency Paid Sick Leave*

All employees who work for a covered employer (fewer than 500 employees) are entitled to 2 weeks of paid sick leave under the new law. This is true regardless of how long the employee has worked for the employer. An employee may use their paid sick leave when the employee is unable to work (including telework) because the employee:

- is subject to a government quarantine or has been advised by a doctor to self-quarantine;
- is experiencing COVID-19 symptoms and seeking a medical diagnosis;
- is caring for an individual who is subject to a government quarantine or has been advised by a doctor to self-quarantine; or
- is caring for their child whose school or daycare has been closed, or childcare is otherwise unavailable, due to the COVID-19 outbreak.

Notably, it appears that an employee would *not* be entitled to paid sick leave if the qualified leave occurs while they are furloughed, where the employee's employer chooses to temporarily stop business operations, or where the government imposes a business closure.

An employer may not require that an employee use other PTO before using paid sick leave. Also, as with the FMLA, its state analogs, and other sick leave laws, an employer may not retaliate against an employee who uses paid sick leave.

### **Who pays for the paid leave?**

Employers must fund these benefits, but they are allowed a tax credit equal to 100% of the qualified sick leave wages they paid. Additionally, self-employed workers (including, for example, independent contractors and gig economy workers), can claim a credit against their self-employment taxes for missed work if they otherwise would have been eligible for family medical leave or paid sick leave had they worked for someone else.

Our tax colleagues will be addressing the tax implications of this Families First Coronavirus Response Act, as well as other COVID-19 related tax issues, in an upcoming alert.

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