

## FAMILIES FIRST CORONAVIRUS RESPONSE ACT

After much back and forth over the past few days, the Senate, and subsequently the President, has signed off on the Families First Coronavirus Response Act. The bill mandates that some employers provide paid sick leave to employees who qualify. Also, the bill expands the current qualifying events under the Family Medical Leave Act of 1993 (FMLA) to include a public health emergency provision. The following summary is an outline of what employers are now required to provide following the passage of this new legislation.

**Effective Date:** April 2, 2020

**Expiration Date:** December 31, 2020

### Emergency Family and Medical Leave Expansion Act

**Eligible Employee:** Any employee who has been employed for at least 30 calendar days

**Eligible Employer:** Employers with fewer than 500 employees. An employer who is a signatory to a multi-employer collective bargaining agreement may fulfill its obligations (consistent with bargaining obligations and the collective bargaining agreement) by making contributions to a multi-employer fund, plan, or program based on what paid leave each of its employees is entitled to while working under the agreement. The fund, plan, or program must enable employees to receive pay for the FMLA leave. There is however an exception for health care providers, employers of emergency responders and for small business (fewer than 50 employees) when abiding by the requirements would jeopardize the viability of the small business. The Secretary of Labor will make the determination when it comes to excluding businesses.

**Qualifying Event:** An employee is unable to work (or telework) due to a need to care for the employee's son or daughter (under 18 years of age) because, due to a public health emergency, the child's school or place of care is closed or the child's care provider is unavailable. A public health emergency means an emergency related to COVID-19 as declared by the Federal, State, or local authority.

**Execution:** The first 10 days of leave may consist of unpaid leave. During this period the employee can elect to substitute any accrued vacation, personal, sick, or medical leave days for this unpaid leave period. After the first 10 days, the employer will be responsible for providing the employee with two-thirds of their regular rate of pay for the remaining duration of their leave (max of 12 weeks). This payment is not to exceed \$200 per day and \$10,000 in the aggregate. For employees who work a varying number of hours per week, employers can take the average number of hours worked each week for the previous six months or for employees

who have been employed for less than six months, use a reasonable expectation of the numbers of hours that employee would normally be scheduled for in a week.

**Notice:** If foreseeable, an employee must provide notice to their employer in a reasonable timeframe.

**Job Protection:** Provides the employee with job protection but there is an exception for employers with fewer than 25 employees. The protection is waived for this group of employers if an eligible employee takes leave, the employee's position is eliminated due to economic reasons caused by a public health emergency, the employer makes a reasonable effort to find a similar role for the employee, and if unable to do so, provides notice to the employee anytime a similar job opens up within the organization for a 1 year period after the qualifying need for leave concludes or the date that is 12 weeks after the date the employee's leave started (whichever is earlier).

## Emergency Paid Sick Leave Act

**Eligible Employee:** All employees employed at the time this bill becomes effective

**Eligible Employer:** Private employers with fewer than 500 employees and public employers. An employer who is a signatory to a multi-employer collective bargaining agreement may fulfill its obligations (consistent with bargaining obligations and the collective bargaining agreement) by making contributions to a multi-employer fund, plan, or program based on what paid leave each of its employees is entitled to while working under the agreement. Health care providers and employers of emergency responders are exempted from this requirement. Also, the Secretary of Labor may exempt small businesses with fewer than 50 employees from the requirement when abiding by it would jeopardize the viability of the business.

**Amount of Paid Sick Leave:** Full-time employees will receive 80 hours of paid sick leave while part-time employees are entitled to the number of hours that they work in a typical two-week period. There is no accrual period.

**Execution:** A eligible employer shall provide their employees with paid sick time if the employee is unable to work (or telework) due to the following reasons:

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 because of COVID-19
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis
4. The employee is caring for an individual subject or advised to quarantine or isolation

5. 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
6. 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

The bill includes anti-retaliation protections, and generally provides for remedies in line with Fair Labor Standards Act penalties for failure to pay minimum wages. Employees will not be entitled to have their unused paid sick time paid out upon the employee's termination, resignation, retirement, or other separation from employment. An employer cannot condition the use of paid sick time based upon the employee's ability to find another employee to cover for them while they are out. An employer cannot require the employee to use another paid leave option (such as vacation or personal time) before they use their paid sick leave time.

Paid leave is limited to \$511 per day (\$5,110 in total) where leave is taken for the first three reasons (outlined above) and \$200 per day (\$2,000 in total) when leave is taken for the remaining three reasons. When the paid sick time is provided for any use described in reasons 4, 5, or 6, as outlined above, the employee's required compensation shall be two-thirds of their regular rate of pay.

**Notice:** Employers must post and keep posted, in a conspicuous place on the premises of the employer where notices to employees are customarily posted, a notice of the requirements described in this act. The notice will be released by the Secretary of Labor no later than 7 days after the act become effective.

Employers can require an employee using their paid sick leave to follow reasonable notice procedures after the first workday (or partial day) that the employee receives paid sick time.

### Emergency Unemployment Insurance Stabilization and Access Act

This section provides additional funding for emergency grants to states for activities related to process and paying unemployment insurance benefits. Among other things, **this does require employers to provide notification of potential unemployment insurance benefits to laid-off employees.**

## Tax Credits for Emergency Paid Sick Leave and Family and Medical Leave

This section provides for refundable tax credits for employers who provide paid emergency sick leave or paid FMLA. The highlights of this bill include:

- A credit against the tax imposed by section 3111(a) of the Internal Revenue Code of 1986 for each calendar quarter an amount equal to 100 percent of the qualified sick leave wages paid by such employer with respect to such calendar quarter.
- A refundable tax credit for self-employed individuals equal to 100 percent of a qualified sick leave equivalent amount for eligible self-employed individuals who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation with respect to coronavirus.
- A refundable tax credit for employers equal to 100 percent of qualified family leave wages required to be paid by the Emergency Family and Medical Leave Expansion Act that are paid by an employer for each calendar quarter.
- A refundable tax credit equal to 100 percent of a qualified family leave equivalent amount for eligible self-employed individuals. The credit is allowed against income taxes and is refundable.
- Amounts paid by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986) may be used to increase the amount of tax credit received by the employer for offering paid sick leave and the Emergency Family and Medical Leave Expansion Act.

Here is a final copy of the [bill](#).