



FAMILY FIRST CORONAVIRUS RESPONSE ACT

FAMILY FIRST CORONAVIRUS RESPONSE ACT MANDATES CERTAIN EMPLOYER PAID FAMILY/ SICK LEAVE AND PROVIDES FOR RELATED TAX CREDITS

The Families First Coronavirus Response Act (“the Act”) was signed into law by the President on March 18, 2020 and will become effective on April 2, 2020. The new law will remain in effect until December 31, 2020. There are two provisions providing paid leave to employees who are unable to work because of the COVID-19 outbreak: 1.) Emergency Expansion of the Family Medical Leave Act (FMLA); and 2.) A New Federal Paid Sick Leave Law.

Emergency Family and Medical Leave Expansion Act

Eligibility – The Act significantly amends and expands FMLA on a temporary basis. The new law applies to employers **with fewer than 500 employees** (note that under the Act, employers of “health care providers”, may elect to exclude those employees from the new emergency FMLA provisions-see 29 CFR 825.102 for the definition of a health care provider). The Act also lowers the eligibility requirement such that any employee who has worked for the employer for at least 30 days prior to the designated leave may be eligible to receive paid family and medical leave. As a result, thousands of employers not previously subject to the FMLA may be required to provide job-protected leave to employees for a COVID-19 coronavirus-designated reason. However, the Act includes language allowing the Secretary of Labor to exempt small businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business.

Reasons for Emergency Leave – Any individual employed by the employer for at least 30 days (before the first day of leave) may take up to 12 weeks of job-protected leave to allow an employee, who is unable to work **or telework**, to care for the employee’s child (under 18 years of age) if the child’s school or place of care is closed or the childcare provider is unavailable due to a public health emergency.

Paid Leave – The first 10 days of Emergency FMLA may be unpaid. During this 10-day period, an employee may elect to substitute any accrued paid leave (such as vacation or sick leave) to cover some or all of the 10-day unpaid period. After the 10-day period, the employer generally must pay full-time employees at two-thirds the employee's regular rate for the number of hours the employee would otherwise be normally scheduled. The Act limits this pay entitlement to \$200 per day and \$10,000 in the aggregate per employee.

Calculating Pay for Non-Full Time Employees – Employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking Emergency FMLA. Employees who have worked for less than six months prior to leave are entitled to the employee's reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.

Emergency Paid Sick Leave Act

Reasons for Paid Sick Leave – The Act allows an eligible employee to take paid sick leave because the employee is:

1. Subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. Advised by a health care provider to self-quarantine due to COVID-19 concerns;
3. Experiencing COVID-19 symptoms and seeking medical diagnosis;
4. Caring for an individual (not limited to family members) subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
5. Caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
6. Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Eligibility – This provision requires employers with fewer than 500 employees to provide full-time employees (regardless of the employee's duration of employment prior to leave) with 80 hours of paid sick leave at the employee's regular rate. The rate is reduced to two-thirds the employee's regular rate to care for others. Employers of health care providers may elect to exclude those employees from the emergency paid sick leave. Part-time employees are entitled to a number of hours equal to the number of hours that such employee works, on average, over a 2-week period. Employers must post in their workplaces a notice relating to the Emergency Paid Sick Leave Act (the DOL is required to publish a model notice within seven days of the enactment of the Act).

Cap on Paid Sick Leave Wages – The Act places limits on paid sick leave. Specifically, paid sick leave wages are limited to \$511 per day up to \$5,110 in the aggregate per employee for their own use and to \$200 per day up to \$2,000 in the aggregate to care for others.

Use of The Paid Emergency Sick Leave – An employee may elect to use this sick time before other PTO and sick leave provided by the employer. The Emergency Paid Sick Leave also does not diminish an employee's right to sick leave under the Massachusetts Earned Sick Leave Act. An employee must use the Emergency Paid Sick Leave Time in 2020 and it may not be carried over to the next year, nor is an employee entitled to payment of unused emergency sick time upon separation from employment.

Tax Credits For The Paid Family/Medical and Sick Leave

The Act provides refundable tax credits for employers who are required to provide the Emergency Paid Family and Medical Leave and Emergency Paid Sick Leave described above. These tax credits are allowed against the employer portion of Social Security taxes. Employers will be reimbursed if their costs for qualified sick leave or qualified family leave wages exceed the taxes they would owe.

Specifically, employers subject to the new law are entitled to a refundable tax credit equal to 100% of the qualified sick leave wages and 100% of the qualified family leave wages paid by employers up to caps on the paid leave described above. It is anticipated that regulations will be issued to provide additional guidance for the implementation of the tax credits.