



Families First Coronavirus Response Act Summary

The President has signed into law the Families First Coronavirus Response Act, the first of several laws that will be passed to address the pandemic. There are a few provisions directly impacting employers' responsibilities and obligations which will become effective April 2nd and expire at the end of the year.

Below is a summary of the Act and how it may impact our constituent population.

Employers covered by the Act: The Act applies to all employers with 500 employees or less. Small businesses with fewer than 50 employees may, on a case by case basis, apply for an exemption. The Secretary of Labor may issue exemptions for small businesses. But, there has not been any indication of such mandatory exemptions at this time.

The Act has several basic grants of paid leave but the two that apply to employees are the **Emergency Family and Medical Leave Expansion Act** and the **Emergency Paid Sick Leave Act**.

1. **Emergency Family and Medical Leave Expansion Act:**

The Act amended the Family and Medical Leave Act (FMLA), and substantially broadened the FMLA's coverage. For employers with less than 50 employees, employers who have likely never had to deal with the FMLA, ARE covered by the Act and ARE REQUIRED to provide paid leave as set forth below.

Employers are required to provide 12 weeks of job-protected paid Family and Medical Leave Act (FMLA) leave—of which the first 10 days may be unpaid.

Employees may use accrued personal or sick leave during the first 10 days, but employers may not require employees to do so.

Employees are eligible for this FMLA leave if they have worked at least 30 calendar days. This is a change from the regular FMLA requirements.

This leave can ONLY be taken to care for a child whose school has been closed as a result of the COVID-19 pandemic or the child care provider is not available due to the public health emergency. An employee is NOT entitled to this paid leave for his/her own exposure/symptoms for Coronavirus or caring for a family member medically affected by Coronavirus (see the next portion of the Act for requests for leave for those reasons).

After the first 10 days, employers must pay employees at two-thirds the employee's regular rate for the number of hours the employee would otherwise have

been scheduled - up to 40 hours per week. Employees who work part time or irregular schedule are paid based on the average number of hours the employee worked prior to taking this FMLA. Paid leave is capped at \$200/day and a \$10,000 cap on the aggregate amount of paid leave to the employee.

A regular rate of pay is not just an employee's hourly rate. It may also include bonuses and commissions.

Employers cannot require an employee to use accrued paid leave concurrently with unpaid leave.

2. Emergency Paid Sick Leave Act:

Employers are required to provide full-time employees two weeks (80 hours) of paid sick leave for specific circumstances related to COVID-19:

- 1) for the employee's own quarantine or isolation order,
- 2) employee's self-quarantine after being advised by a medical professional,
- 3) an employee exhibiting symptoms of corona and/or seeking a medical diagnosis for corona,
- 4) caring for someone who is quarantined (not limited to family members),
- 5) caring for a child whose school has been closed as a result of the COVID-19 pandemic or the child care provider is not available due to the public health emergency, or
- 6) the employee is 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.

Part-time employees are entitled to the number of hours of paid sick time equal to the number of hours they work, on average, over a two-week period.

An employee is immediately eligible for this paid time off upon hire. There is no 30-day waiting period as required by the Emergency Family and Medical Leave described above.

How much are employers required to pay?

- 1) For the employees' own condition (1, 2, or 3), employers must pay the employee's regular rate subject to a maximum of \$511 per day and \$5,110 in the aggregate.

- 2) For taking care of others (4, 5, or 6), employers must pay the employee at two-thirds the employee's regular rate, subject to a maximum of \$200 per day and \$2,000.

Employers are required to post a notice informing employees of their rights to leave. The Department of Labor will issue a model notice.

This is in addition to any paid sick leave currently provided by an employer. An employer cannot change its current paid leave policy after enactment to avoid these obligations.

Failure to pay sick leave will be treated as the failure to pay wages under the Fair Labor Standards Act.

Job Protection/Job Restoration: Employers with 25 or more employees are required to return the employee to the prior position or a substantially equivalent position. There are some exceptions if the position doesn't exist due to economic circumstances. This exclusion is subject to the employer making reasonable attempts to return the employee to an equivalent position and requires an employer to make efforts to return the employee to work for up to a year following the employee's leave.

No Discrimination or Retaliation: Similar to other employment laws, employers are prohibited from discriminating or retaliating against employees for taking either of these leaves.