



## FAMILIES FIRST CORONAVIRUS RESPONSE ACT

In a reaction to the rising uncertainty for employers and employees surrounding COVID-19, the President on **March 18, 2020** signed into effect the Families First Coronavirus Response Act (the "**Act**"). The Act temporarily expands the applicability and creates a new subset of benefits for qualifying employees under the existing Family Medical Leave Act ("**FMLA**"). While the Act has multiple components, discussed below are those that directly impact the employer-employee relationship.

Please note, the Act itself is lengthy and comprehensive. The information provided here is intended to provide a brief summary and overview. If you have any questions or concerns, please feel free to contact us.

## EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

The Emergency Family and Medical Leave Expansion Act expands on the benefits of the FMLA by allowing **eligible employees** who are employed by **covered employers** to take up to 12 weeks of job-protected leave if a **qualifying reason** exists, through December 31, 2020.

- **Eligible Employees:** Any employee who has been employed for 30 days (compared to one year as required under the existing FMLA).
- **Covered Employers:** All private employers with fewer than 500 employees and all public sector employers. Employers that were not previously subject to the FMLA are now obligated to comply with this provision. **Of note, the Act gives the Secretary of Labor the authority to issue regulations to exempt some small businesses with fewer than 50 employees (where the imposition of the Act's requirements would jeopardize the viability of the business going forward). It is unclear at this time how the Secretary of Labor will react in response to this vested authority.** The Act also allows employers of certain healthcare providers and emergency responders to exclude such employees from these amendments to the FMLA.
- **Qualifying Reason:** The employee is unable to work (or telework) to care for the employee's child because the child's school or place of care has been closed, or is unavailable, due to a public emergency.
- **Compensation:** The initial 10 days of leave may consist of unpaid leave. However, an employee may elect to substitute any existing accrued paid leave for this unpaid leave, including any emergency leave for which the employee qualifies, as described below. **After the first 10 days of leave, the employer must provide paid leave equal to two-thirds of the employee's regular rate of pay for the remainder of the leave.** With respect to employees with varying schedules and pay, the Act provides that the paid leave must be equal to the average number of hours that the employee was scheduled to work per day over the prior six-month period. **In no event shall the total value of paid leave taken by an employee exceed \$200/day or \$10,000 in the aggregate.**
- **Job Restoration:** Under the existing FMLA, an employer is obligated to place an employee in the same or an equivalent position once they return to work from leave. For employers with fewer than 25 employees, the Act provides some relief from this obligation. Specifically, these smaller employers are not bound by this obligation if the employee's position no longer exists after the leave due to economic downturn or circumstances caused by a public health emergency during the leave. This exclusion is subject to the employer making reasonable attempts to return the employee to an equivalent position or, if not possible, making efforts to re-hire the employee for up to a year following the employee's leave.
- **Effective Date And Expiration:** This rights and benefits outlined above will become effective on April 1, 2020, and will remain in effect until December 31, 2020.

## EMERGENCY PAID SICK LEAVE ACT

The Emergency Paid Sick Leave Act requires **covered employers** to provide **eligible employees** with **paid leave** when a **qualifying reason** exists or has been triggered through December 31, 2020.

- **Covered Employers:** All private employers with fewer than 500 employees and all public sector employers. Of note, an employer who is a health care provider or emergency responder may elect to exclude its employees from this provision.
- **Eligible Employees:** All employees regardless of their length of employment.
- **Paid Leave:** The amount of paid leave to be given is based on whether the subject employee works full-time or part-time. For full-time employees, employers must provide 80 hours of paid sick leave. Employees who work part-time or irregular schedules must be paid based on the average number of hours the employee worked during the six-month period prior to taking the paid sick leave.
  - If the paid leave is being taken for qualifying reasons related to self-care (reasons 1-3 below) the employee is entitled to pay at the employee's regular rate capped at \$511/day and \$5,110 in the total aggregate.
  - If the paid leave is being taken for qualifying reasons related to care of another individual (reasons 4-6 below), the employee is entitled to two-thirds of the employee's regular rate capped at \$200/day and \$2,000 in the total aggregate.
- **Qualifying Reasons:** Each of the following circumstances constitutes a qualifying reason:
  - 1) The employee is subject to a federal, state, or local quarantine related to COVID-19;
  - 2) The employee has been advised by a health care provider to self-quarantine due to concerns related to 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 (not limited to just a family member)** who is subject to qualifying reasons (1) or (2) above;
  - 5) The employee is caring for a child while the school or place of care for the child is closed, or the employee's child care provider is unavailable, due to COVID-19 precautions; 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.
- **Effective Date And Expiration:** This rights and benefits outlined above will become effective on April 1, 2020, and will remain in effect until December 31, 2020

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## HOW WILL EMPLOYERS PAY FOR THESE BENEFITS?

The Act makes clear that employers are responsible for all payments owed to qualifying and covered employees under both the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act. To offset the financial burden, the Act provides a quarterly tax credit to employers (and certain self-employed individuals) to offset the cost of paid family leave and paid sick leave. Specifically, employers are eligible for a refundable tax credit of 100% of qualified family leave wages paid and sick leave wages paid against their employer-side payroll tax liability. If the credit value exceeds the employer's quarterly tax liability, the Act provides that the excess will be treated as an overpayment and refunded under sections 6402(a) and 6413(b) of the Internal Revenue Code. Because of the effective date of the provisions, April 1, 2020, the credit is only available for Q2 through Q4 2020, as enactment took too long to have any application in Q1.

## FINAL THOUGHTS

The effective date for both the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act is **April 1, 2020**. This deadline leaves covered employers with limited time to digest the new regulations and adopt compliant policies. Moreover, the Act **does not** exempt employers who have shut down operations temporarily but have not gone out of business. As a result, employers may also face liquidity and cash flow issues as employees begin requesting and taking leave under the Act.

It is also important to note that the Act is the first step adopted by the federal government to assist employers and employees during these challenging times. The legislature has emphasized that the Act is the first of many steps that the federal government will take in the near future. Further, many states are in the process of proposing additional emergency legislation that would expand on the benefits created and offered under the Act.

We will continue to monitor this rapidly developing situation and provide updates as appropriate. An update to these provisions outlined above was signed into law on **March 27, 2020**. An overview of these updates, which added to and changed portions of the **FFCRA**, can be found on our website by [clicking here](#).

If you have any questions or need assistance of any kind, please do not hesitate to contact [Sameer S. Karim](#), [Devon Sharp](#), or [Brenna Lermon](#).



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