

The New Employer Obligations under the Families First Coronavirus Act (H.R. 6201)

March 19, 2020

The “Families First Coronavirus Response Act” (FFCA) was signed by President Donald Trump yesterday, March 18, 2020. The law goes into effect no later than 15 days after enactment, or April 2, 2020, and will remain in place through the end of 2020. Here are highlights of the new employer obligations.

There are two provisions providing paid leave to employees forced to miss work because of the COVID-19 outbreak:

- An emergency expansion of the Family Medical Leave Act (FMLA)
- A new federal paid sick leave law

The bill covers all private employers with fewer than 500 employees and certain public employers. The FFCA also includes language allowing the Secretary of Labor to exclude healthcare providers and emergency responders from the definition of employees who are allowed to take such leave, and to exempt small businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business. No guidance has yet been issued.

FMLA Expansion for COVID-19

The FFCA amends the FMLA to allow an employee who is unable to work (or telework) to take up to 12 weeks of job protected leave due to a need to care for the employee’s son or daughter (under 18 years of age) if the child’s school has been closed, or the childcare provider is unavailable, due to a public health emergency declared by a federal, state, or local authority.

Amount of Pay

Under the new emergency FMLA provisions, the employer can provide the first 10 days of this leave unpaid. Subsequent absence must be paid at 2/3 the employee’s regular rate of pay. The FFCA includes a cap of \$200 a day and \$10,000 in total. An employee may elect to substitute any accrued vacation leave, personal leave, or medical/sick leave for the first 10 days of unpaid leave. 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 the emergency FMLA leave.

Eligible Employees

The new FMLA provisions apply to employees of covered employers who have been employed for at least 30 calendar days.

Paid Sick Leave for COVID-19

The FFCA also adds a paid sick leave obligation. A qualifying employer may not require an employee to use other paid leave provided by the employer before the employee uses the paid sick leave available under the Act. Any unused paid sick leave does not carry over from one year to the next.

Qualifying employers must immediately make available 80 hours of paid sick leave for full-time employees (part-time employees are entitled to be paid based on the average number of hours

the employee worked for the six months prior to taking paid sick leave) for 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 healthcare provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in (1) or has been advised as described in (2).
5. The employee is caring for their son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of the son or daughter is unavailable, due to COVID-19 precautions.
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. Qualifying employers are required, at the request of the employee, to pay mandated emergency paid sick leave instead of the initial 10 days of unpaid leave permitted by the FMLA expansion.

Amount of Pay

Paid sick leave is paid at the employee's regular rate and is capped at: \$511 per day and \$5,110 in the total for a use described above in (1), (2), or (3).

Paid sick leave is paid at 2/3 of the employee's regular rate and is capped at: \$200 per day and \$2,000 in the total for a use described above in (4), (5), or (6).

Eligible Employees

The paid sick leave requirements would apply to all employees who work for covered employers.

Tax Credit

Qualified employers must pay out the benefits, but the FFCA provides for a refundable tax credit for 100 percent of amounts paid out to employees, with the above-noted limits. These tax credits will be allowed against the employer portion of Social Security taxes. There is also a provision to increase the tax credit by the employer's qualified health plan expenses allocable to the qualified leave wages. The IRS has not yet released any guidelines on the methodology for reporting or receiving the tax credits.

This information is for general education and knowledge. It is not considered legal advice and is not designed to be, and should not be used as, the sole source of information regarding your employer obligations under the FFCA. You should always be aware of any state or local regulations that impose more stringent requirements than the FFCA. If you have specific questions regarding a particular situation, please consult legal counsel.