

Summary of the Federal Families First Coronavirus Response Act

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President Trump signed the Federal Families First Coronavirus Response Act last night. It will take effect on April 2, 2020.

The Act is an economic stimulus plan aimed at assisting Americans impacted by the COVID-19 outbreak and has several components that apply to employers. Please note that the final regulations differ from the original version passed over the weekend. Following is a summary of the Act's provisions.

COVID-19 Testing

Private health plans (including insured and self-insured) to provide coverage for COVID-19 diagnostic testing and related services to employees and their covered dependents, without cost-sharing (like deductibles, copayments, and coinsurance) from the enactment of the Act through the end of the national emergency period. Plans may not require prior authorization or similar medical management requirements as a precondition of COVID-19 testing or services.

Paid Family and Medical Leave

Covers employers with fewer than 500 employees only.

Provides employees of covered employers, who have been on the job for at least 30 days, with the right take up to 12 weeks of job-protected leave under the Family and Medical Leave Act if they are unable to work or telework, due to having 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. This is now the only qualifying need for Emergency FMLA.

The first 10 days of FMLA will be unpaid. During this time, employees can elect to use any accrued paid leave (PTO, vacation, sick) to cover some or all of the 10 days.

After the first 10 days, full-time employees generally must be paid at two-thirds their regular rate for the number of hours the employee would have normally been scheduled. Part-time employees should be paid based on the average number of hours the employee worked for the six (6) months prior to taking the leave.

The Paid Family and Medical Leave portion of the Act has maximum pay limits for employees of \$200 per day and \$10,000 in total per employee.

Employers with 25 or more employees will have the same obligation as under traditional FMLA to return any employee who has taken Emergency FMLA to the same or equivalent position upon the return to work. However, employers with fewer than 25 employees are generally excluded from this requirement if the employee's position no longer exists following the Emergency FMLA leave due to an economic downturn or other circumstances caused by a public health emergency during the period of Emergency FMLA. 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.

The Act includes language to exempt small businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business. It also allows the Secretary of Labor to exclude healthcare providers and emergency responders from the definition of employees who are allowed to take such leave.

This provision will expire on December 31, 2020.

Paid Sick Leave

Covers employers with fewer than 500 employees only.

Full-time employees must be provided with 80 hours of paid sick leave for any of the qualifying reasons.

Part-time employees are entitled to be paid for any qualifying reason based on the average number of hours the employee worked for the six months prior to taking paid sick leave.

Employees may take sick leave for the following reasons and must be paid their regular rate of pay: subject to a federal, state or local quarantine or isolation order related to COVID-19; advised by a health care provider to self-quarantine due to COVID-19 concerns; experiencing COVID-19 symptoms and seeking medical diagnosis;

Employees may take sick leave for the following reasons and must be paid two-thirds their regular rate of pay: caring for an individual 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; 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 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.

Paid sick leave wages may be capped at \$511 per day/per employee up to \$5,110 total per employee for their own use (first three reasons listed above) and \$200 per day/per employee up to \$2,000 total per employee to care for others and for other substantially similar condition (last three reasons listed above).

An employee may first use paid sick time under the Act for covered reasons before using employer-provided paid leave, and an employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses paid sick time under the Act.

This provision will expire on December 31, 2020.

Tax Credits

Covered employers are eligible for tax credits for providing the paid family medical leave and paid sick leave. These tax credits are allowed against the employer's portion of Social Security taxes. Covered employers are entitled to a refundable tax credit equal to 100% of the qualified sick leave wages paid by employers for each calendar quarter in adherence to the Emergency Paid Sick Leave Act. The qualified sick leave wages are capped at \$511 per day (\$200 per day if the leave is for caring for a family member or child) for up to 10 days per employee in each calendar quarter.

Employers are entitled to a refundable tax credit equal to 100% of the qualified family leave wages paid by employers for each calendar quarter in accordance with the Family and Medical Leave Expansion Act. The qualified family leave wages are capped at \$200 per day for each individual up to \$10,000 total per calendar quarter. Only those employers who are required to offer Emergency FMLA and Emergency Paid Sick Leave may receive these credits.