



## FAMILIES FIRST CORONAVIRUS RESPONSE ACT ENACTED INTO LAW - WHAT EMPLOYERS NEED TO KNOW

by Gray Reed's Labor & Employment Department  
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To address the economic impact of the COVID-19 global pandemic, Congress passed the Families First Coronavirus Response Act yesterday, and the President signed it into law last night. The bill contains three important provisions which will impact many employers:

1. Family and Medical Leave Act (FMLA) expansion of coverage and benefits for employees whose child's school or other childcare facility is closed due to COVID-19;
2. Up to 80 hours of paid sick leave for employees affected by COVID-19; and
3. Tax credits for employers to help offset the increased costs of the leave provisions.

Here is what employers need to know:

- **Effective period** - The FMLA expansion and the paid sick leave provisions will become effective April 2, 2020. Both provisions are temporary and will expire on December 31, 2020.
- **Affected employers** - All employers with fewer than 500 employees are subject to both provisions.
- **Exemption for health care providers and emergency responders** - The law gives employers of health care providers and emergency responders the option to exclude such employees from the expanded FMLA benefits and paid sick leave.

### FMLA EXPANSION

- **Reasons for leave** - Employees may take up to 12 weeks of leave because the employee is unable to work—either on-site or remotely—due to a responsibility to care for the employee's child if the child's school or paid care provider has been closed or is unavailable due to the public health emergency.
- **Eligible employees** - Employees are eligible for the expanded FMLA leave rights after 30 days of employment.
- **Paid leave** - The first 10 days of any eligible leave are unpaid, though an employee may use PTO or any other type of leave available during this period. After the first 10 days, employees must be paid at 2/3 their regular rate of pay for the number of hours the employee would ordinarily be scheduled to work. However, paid leave under this provision is capped at \$200 per day and \$10,000 in the aggregate per employee.
- **Job restoration** - Employers with more than 25 employees are under the same obligation to restore employees returning from leave to the same or equivalent positions. However, employers with fewer than 25 employees are not required to do so if the employee's position no longer exists due to an economic downturn or other changes in conditions caused by the public health emergency during the period the employee was on leave. This exclusion is subject to reasonable efforts by the employer to: (1) return the employee to the same or equivalent position; and (2) contact the employee if an equivalent position becomes available up to a year after the employee's leave ends.
- **Exemption for small businesses** - The law allows for the Secretary of Labor to issue regulations allowing for exemptions for small businesses (i.e., fewer than 50 employees). However, it remains to be seen if, when, or how such regulations will be implemented.

### PAID SICK LEAVE

- **Reasons for leave** - Employers are required to pay an employee up to 80 hours of their regular rate of pay if the employee is unable to work—either on-site or remotely—because the employee: (1) is subject to a federal, state, or local quarantine

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or isolation order relating to COVID-19; (2) has been advised by a health care provider to self-quarantine due to concerns relating to COVID-19; (3) is seeking diagnosis after exhibiting COVID-19 symptoms; (4) is caring for another individual who is subject to either a quarantine/isolation order or who has been advised by a health care provider to self-quarantine; (5) is caring for the employee's child because the child's school or paid care provider has been closed due to COVID-19 precautions; or (6) is experiencing substantially similar conditions to those of COVID-19 as specified by the Secretary of Health and Human Services.

- **Amount of leave** - Employers must provide at least 80 hours of paid leave for full-time employees. Part-time employees are entitled to paid leave equal to the number of hours the employee works, on average, over a two-week period.
- **Payment of leave** - Employers must pay employees their regular rate of pay—capped at \$511 per day and \$5,110 in the aggregate per employee—for leave taken pursuant to items (1), (2), and (3) above (medical care or quarantine of employee). For leave taken pursuant to items (4), (5), and (6) above (school closures or care for others), employers must pay employees 2/3 of their regular rate—capped at \$200 per day and \$2,000 in the aggregate per employee.
- **Exemption for small businesses** - The Secretary of Labor may issue regulations providing exemptions to small businesses (i.e., fewer than 50 employees) from the requirement to provide paid sick leave for an employee to care for their child due to the closure of the child's school or unavailability of other paid care provider.
- **Carryover** - Because this is aimed at temporary relief, the paid sick leave hours will not carry over into 2021.

## TAX CREDITS AGAINST SOCIAL SECURITY TAX

To compensate for the additional burden the FMLA expansion and paid sick leave provisions may have on businesses, employers are entitled to a refundable tax credit equal to 100% of the qualified sick leave wages or qualified family leave wages paid by employers for each calendar quarter. The tax credits provided by the bill are allowed against the employer portion of Social Security taxes. It allows for reimbursement if employer's costs for qualified sick leave or qualified family leave wages exceed the taxes owed. The credit for sick leave wages is 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. The credit for family leave wages is capped at \$200 per day—up to \$10,000 total—for each individual per calendar quarter.

## KEY TAKEAWAY FOR EMPLOYERS

The Families First Coronavirus Response Act is the federal government's first major legislative response to the significant impact COVID-19 is having—and will continue to have—on the American workforce. The provisions contained in the bill represent substantial shifts in federal employment policy aimed at combating the spread of the virus, and it is imperative that employers immediately begin preparing themselves to implement the measures outlined above.

Additionally:

- The expanded benefits will likely apply to furloughed employees. This may affect employers' decision-making in determining whether a layoff/RIF is more appropriate than a furlough.
- Small employers must take heed. Whereas the FMLA may not have applied in the past, the new law includes a much larger group of businesses that are not familiar with the FMLA.

There will be a lot of questions about the details of and the implementation of the law. We are here to help, feel free to [contact us](#).

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