

The Families First Coronavirus Response bill signed into law

On Wednesday night (3/18/2020), the President signed the Families First Coronavirus Response Act into law. The Senate passed it only that afternoon. The leave provisions become effective April 2 and expire December 31, 2020.

The measure has multiple sections, including emergency family and medical leave expansion, emergency paid sick leave, and tax credits for paid leave.

FMLA expansion

Employers with fewer than 500 employees would be covered by the expanded portions of the FMLA. Employees would be entitled to the extra FMLA leave reason if they have worked for the company for at least 30 days. Employers may, however, exclude healthcare providers or emergency responder employees from this emergency FMLA entitlement.

The extra reason employees may take FMLA leave is when an employee is unable to work (or telework) due to a need for leave to care for the child because the child's school or place of care has been closed, or the childcare provider is unavailable due to a public health emergency.

The first 10 days of this FMLA leave would be unpaid, but the remainder of the 12 weeks would be paid at 2/3 the employee's regular rate of pay, up to \$200 per day and \$10,000 total. Employees could choose to use accrued paid time off (including the emergency paid sick leave) for the unpaid 10 days, but employers may not require that they do so.

If an employer has fewer than 25 employees, the restoration provisions would not apply. Employers need not reinstate employees if their positions no longer exist due to economic conditions caused by the emergency. In such situations, however, those small employers must make reasonable efforts to contact a displaced employee for up to one year after they are displaced if an equivalent position becomes available

Paid sick leave

Private employers with fewer than 500 employees and public employers with one or more employees will need to provide paid sick leave to all employees, regardless of how long employed with the company. Employees will be immediately entitled to paid sick leave for the following reasons:

1. The employee is subject to quarantine or isolation order.
2. The employee has been advised to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms and seeking a medical diagnosis.
4. The employee is caring for an individual under quarantine or isolation.
5. The employee is caring for a child because the school or daycare is closed, or the childcare provider is unavailable.
6. The employee is experiencing any other substantially similar condition specified by the enforcing agencies.

Full-time employees would be entitled to up to 80 hours of paid sick leave. If, however, an employee is caring for a family member (for reasons 4, 5, and 6), sick leave is paid at two-thirds the employee's regular rate.

Part-time employees would be entitled to an amount of leave reflecting an average two-week period.

The paid sick leave is limited to \$511 per day (\$5,110 in total) if leave is taken for an employee's own illness or quarantine; and \$200 per day (\$2,000 in total) if leave is taken to care for others or school closures.

The paid sick leave provisions include a posting requirement. The DOL is to provide a model notice within seven days.

The paid sick leave is not retroactive.

Employers must allow employees to first use emergency paid sick leave under this new law, then employees may decide to use any remaining accrued paid leave under the employer's policy. Employers may not require employees to use accrued leave under an employer policy first.

Tax credits

Employers who provided paid sick leave are allowed a tax credit of up to 100 percent of the wages paid to employees. This credit is allowed against the tax imposed by the employer portion of Social Security taxes.