

COVID-19: FAMILIES FIRST CORONAVIRUS RESPONSE ACT

On March 18, 2020, the US Senate passed the Families First Coronavirus Response Act (The Act) and President Trump signed it into law. The emergency aid package contained in The Act is slightly modified from the bill initially proposed by the House. Employers are highly recommended to talk to their legal counsel about whether they are subject to the law.

For purposes of both Emergency Paid Sick Leave and expanded FMLA Leave, a covered employer is a private entity or individual employing fewer than 500 employees, and public employers that employ one or more employees. The Act also applies to workers who are covered under a multi-employer collective bargaining agreement, whose employers make contributions to the collective bargaining unit. However, employers may exclude health care providers or emergency responders from the definition of eligible employees under the paid sick leave and expanded FMLA provisions.



The new requirements become effective no later than 15 days after enactment. DOL guidance clarified that compliance with the Act is expected as of April 1, 2020. The Act expires on December 31, 2020.

EMERGENCY PAID SICK LEAVE

The Act provides that up to 80 hours of paid sick leave will be required for full-time employees (prorated for part-time employees based on average hours over a two-week period) who are unable to work or telework due to Coronavirus, related to COVID-19.

Emergency paid sick leave benefits will be based on the greater of the employee's normal rate of pay or the minimum wage rate, capped at \$511 per day (\$5,110 in aggregate) for COVID-19 related reasons, if the employee:

1. is subject to a Federal, State or local quarantine or isolation order, or
2. has been advised by a health care provider to self-quarantine, or
3. is experiencing symptoms of COVID-19 and is seeking medical diagnosis.

Reduced Emergency Paid Sick Leave must be provided for the care of another individual for one of the following reasons:

1. when the employee must take sick leave to care for an individual who is subject to a quarantine, has been advised by a health care provider to self-quarantine, or who has COVID-19 symptoms, or
2. to care for a son or daughter under age 18 whose school is closed or whose child care provider is unavailable due to COVID-19 precautions, or
3. for any other substantially similar condition specified by the Secretary of Health and Human Services.

The benefit for a caregiver is two-thirds of the employee's regular pay, to a maximum of \$200 per day (\$2,000 in aggregate).

Employees may use this paid sick leave first, before other accrued leave (PTO, vacation, or sick leave) under the employer's general leave policies. The choice about whether or not to use the leave first is entirely at the employee's discretion.

Employers subject to the act must post notice of the requirements for paid sick leave. A model notice will be provided by the US Department of Labor to satisfy the posting requirement within seven days of enactment.

Failure to provide paid sick leave as required will constitute a violation of the Federal minimum wage requirements.

EMERGENCY PAID FAMILY MEDICAL LEAVE

Covered employers must provide up to 12 weeks of expanded FMLA leave. After the first two weeks of Family Medical Leave, employees will be paid at two-thirds of the employee's rate of pay. For the first two weeks, employers are not required to provide paid FMLA leave. Generally, the first two weeks will be covered under the Emergency Paid Sick Leave, or the employer's paid time off policies. The benefit is capped at \$200 per day, up to an aggregate limit of \$10,000.

Expanded FMLA leave must be offered to a covered employee when "the employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions." In other words, the school or daycare provider must be closed.

The definition of "son or daughter" follows the definition in the current FMLA regulations, which includes "a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis" who is either under age 18 or is at least age 18 and is incapable of self-care due to a disability.

Unlike existing FMLA laws, the requirement to provide expanded FMLA is applicable to all employers with fewer than 500 employees, including employers with fewer than 50 employees in a geographic location who would not normally be subject to FMLA.

The expanded FMLA leave will be available to all

employees after 30 days of employment (as opposed to 12 months and 1,250 hours for regular FMLA leave).

Affected employers will be eligible to obtain a tax credit (against employment taxes) to offset the cost of emergency paid sick leave and expanded family medical leave.

HEALTH COVERAGE FOR TESTING OF COVID-19

Coverage without cost-sharing for testing for COVID-19 is required for all enrollees in individual health plans, fully-insured or self-funded group health plans maintained by private employers (including grandfathered health plans), as well as plans maintained by the Federal Government, including Medicare (and Medicare Advantage plans), Medicaid, CHIP, TRICARE, Indian Health Services and employees working for an agency of the Federal government.



Please be advised that any and all information, comments, analysis, and/or recommendations set forth above relative to the possible impact of COVID-19 on potential insurance coverage or other policy implications are intended solely for informational purposes and should not be relied upon as legal advice. As an insurance broker, we have no authority to make coverage decisions as that ability rests solely with the issuing carrier. Therefore, all claims should be submitted to the carrier for evaluation. The positions expressed herein are opinions only and are not to be construed as any form of guarantee or warranty. Finally, given the extremely dynamic and rapidly evolving COVID-19 situation, comments above do not take into account any applicable pending or future legislation introduced with the intent to override, alter or amend current policy language.