

Families First Coronavirus Response Act

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This article is sent as a continuation of an article we sent yesterday concerning certain federal laws affecting employees during the COVID-19 Crisis. On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act (“FFCRA”). The FFCRA amends the current Family and Medical Leave Act (“FMLA”) to require that certain covered employers provide paid sick leave and expanded family and medical leave when eligible employees miss work for certain conditions /or family care situations. While FFCRA also includes provisions related to benefit programs and COVID-19 testing, this article focuses on the portions of the FFCRA that affect private employers. The FFCRA goes into effect April 2, 2020 and remains in effect until December 31, 2020.

For employers, the two significant provisions of the FFCRA are (1) the introduction of a new federal Paid Sick Leave law, and (2) an expansion of FMLA.

Emergency Paid Sick Leave and Emergency Family and Medical Leave

What must a covered employer provide for an eligible employee?

- [Emergency Paid Sick Leave] Two weeks (up to 80 hours) of expanded family and medical leave
 - at the employee’s regular rate of pay
 - but not more than \$511 per day and \$5,110 over the two-week period
 - where the employee is unable to work (or telework) because the employee is
 - quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), or
 - experiencing COVID-19 symptoms and seeking a medical diagnosis

or

- [Emergency Paid Sick Leave] Two weeks (up to 80 hours) of expanded family and medical leave
 - at two-thirds the employee’s regular rate of pay
 - but not more than \$200 per day and \$2,000 over the two-week period
 - because the employee is unable to work (or telework) because of
 - a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or
 - care for a child (under 18 years of age) whose school or childcare provider is closed or unavailable for reasons related to COVID-19, or
 - the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

In addition, if an employee of a covered employer has been employed for at least 30 days, the employer must **also** provide:

- [Emergency Family and Medical Leave] Up to an additional 10 weeks of expanded family and medical leave
 - At least two-thirds the employee’s regular rate of pay

- but not more than \$200 per day and \$12,000 over the 12-week period
- where an employee is unable to work (or telework)
 - due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.
- The first ten days of Emergency and Family Medical Leave are unpaid. However, the employee may elect to use Emergency Paid Sick Leave during these ten days.

What is a “covered employer”?

A covered employer is one that employs fewer than 500 employees. Private employers are covered, as well as certain public employers. The FFCRA allows the U.S. Department of Labor (DOL) to issue regulations exempting employers with fewer than 50 employees if the requirements would jeopardize the business’ viability, but DOL has not yet done so.

Which employees are “eligible”?

All employees of a covered employer are eligible for two weeks of expanded family and medical leave for the specified reasons related to COVID-19. Additionally, employees **employed for at least 30 days** are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19.

How is expanded family and medical leave calculated for part-time employees?

For either two-week option described above, a part-time employee is eligible for leave for the average number of hours that the employee works over a two-week period.

For the additional 10-weeks of leave for employees who have been employed by their employer for at least 30 days, a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Is there a cap on the pay I must provide an employee taking expanded family and medical leave?

Yes. As described above, each leave situation sets a daily and aggregate pay cap.

What if I already offer my employees paid sick leave?

The 80 hours of federal Emergency Paid Sick Leave must be offered **in addition to** existing sick leave.

Does the Act apply to hourly employees and salaried employees?

Yes.

What if my employees can telework?

Under the Act, an employee must be unable to work at their physical location or telework (i.e., work from home) in order to qualify for expanded family and medical leave. Of course, some employees are simply unable to telework by the nature of their position or industry.

Are there any exemptions for health care providers or emergency responders?

Yes, but the employer’s options are limited for certain employees.

The FFCRA allows an employer to exclude certain employees, so long as the employee is a “health care provider” or “emergency responder”.

Under FMLA, a “health care provider” is: (1) “a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices” or (2) “any other person determined by the Secretary [of Labor] to be capable of providing health care services.” Section (2) is limited to podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse midwives, clinical social workers, physician assistants, and “any health care provider from whom an employer or the employer’s group health plan’s benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.”

At this time, and until the Department of Labor provides clarifying guidance, we do not interpret registered nurses, pharmacists, pharmacy technicians and administrative employees of medical practices as qualifying for exemption by their employer.

Please let us know if there is anything we can do to assist you.