

# Employment Law Update: COVID-19 Related Family Medical Leave and Paid Sick Leave Laws

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In response to the impact of the COVID-19 pandemic on workplaces across the United States, on March 18, 2020, President Trump signed into law the *Families First Coronavirus Response Act*, which among other various provisions for relief, contains two major provisions that will impact numerous employers across the nation:

(1) **The Emergency Family and Medical Leave Expansion Act**, which expands the already existing Family Medical Leave Act, ("FMLA") on a temporary basis for employees impacted by COVID-19, and

(2) **The Emergency Paid Sick Leave Act**, which institutes the first federally mandated Paid Sick Leave requirements for employees impacted by COVID-19 , also on a temporary basis.

These Acts apply to employers of 500 employees or less in certain circumstances relating to COVID-19 impact on employees, that are outlined below.

Most notably, these benefits to employees are to be implemented by requiring employers to directly provide the emergency paid sick leave or family leave to the employees, and for employers to later be reimbursed by the Federal Government through the use of refundable tax credits.

Employers must also keep in mind that in these uncertain times, this legislation may not be the final word on issues relating to family leave, or paid sick leave. New legislation and legal requirements are being enacted on a continuing and emergent basis at the federal, state, and local levels to battle the effects of COVID-19. Currently state governments in New York and New Jersey have enacted, or are in the processing of enacting, additional legislation on the state level that may expand on these federal requirements. Employers must remain vigilant in order to maintain compliance with the many

requirements that may apply to their circumstances.

## The Emergency Family and Medical Leave Expansion Act

### What Does it Do?

- Allows employees to take up to 12 weeks of job-protected leave, including potentially paid leave,
- Applies when the employee is unable to work or telework due to the need to care for their son or daughter under age 18, in circumstances where their elementary school, high school, or place of care has been closed, or if their child care provider is unavailable, because of a public health emergency.
- A public health emergency is defined for the purpose of this provision as any emergency with respect to COVID-19 declared by a federal, state, or local authority.

### Which Employers Does this Affect?

All private employers with fewer than 500 employees and certain public employers.

### Which Employees Does it Cover?

All employees employed for at least 30 days can utilize the benefits under this Act.

### What are the Rates of Pay?

- For the first ten days of leave needed under this provision, employers are not required to pay the employees for leave.
- However, the employee may elect to use any accrued leave (e.g. vacation time, personal time, sick time) during these first ten days.
- If leave is still necessary after ten days, the employee is to be paid by the employer at 2/3 of their regular rate of pay.
- Payments by employers are capped at a rate of \$200 per day, and \$10,000 in aggregate.

### Additional Protections for Employees

- Employers must make reasonable efforts to restore employees who have taken leave under this Act to their prior position or an equivalent once the leave is complete.
- Employers of fewer than 25 employees may be exempt from this requirement in certain circumstances.
- If reasonable efforts fail to reinstate, employers must make efforts to contact and reinstate and the employee if an equivalent position becomes available within a one year period.

## How do Employers get Reimbursed?

Employers are entitled to a refundable tax credit counting against the employer's payroll tax for each quarter, equal to 100% of the qualified paid Family Medical Leave Act wages paid by the employer during that period.

## Are there any Exceptions?

Employers who are health care providers or emergency responders may elect to exclude their employees from these provisions.

The U.S. Department of Labor may exempt small businesses with fewer than 50 employees where the requirements would "jeopardize the viability of the business."

## When Does it Take Effect?

These requirements go into effect on April 2, 2020, and expire on December 31, 2020.

## The Emergency Paid Sick Leave Act

### What Does it Do?

Employers are required to provide paid sick leave to employees who cannot work or telework due to eligible reasons relating to COVID-19.

Eligible reasons for employees include when employee:

- Is subject to a government quarantine or isolation order related to COVID-19
- Has been advised by health care provider to self-quarantine due to COVID-19
- Is experiencing symptoms of COVID-19 and seeking a medical diagnosis
- Is caring for an individual who is subject to quarantine order, or self-quarantine
- Is caring for a son or daughter if school or place of care has been closed, or child care provider is unavailable due to COVID-19
- Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services

## Which Employers Does this Affect?

All employers with fewer than 500 employees.

## Who Does this Cover?

All employees are eligible.

## How Much Paid Sick Time is Allowed?

- Full-time employees must be provided with up to 80 hours of paid sick leave.
- Part-time employees may receive sick leave hours up to the number of hours they work on average over a two-week period.
- Employers may not require employees to use other accrued paid leave provided by the employer before the employee uses the paid sick time provided in this act.

## What are the Rates of Pay?

- Paid leave is provided at a rate equal to the employee's regular rate of pay, and is capped at an amount of \$511 per day, and \$5,110 in the aggregate.
- To the extent that the paid leave is taken for reasons relating to care for other family members, pay is provided at 2/3 the employee's regular rate of pay, and is capped at \$200 per day, and \$2,000 in the aggregate.

## How do Employers get Reimbursed?

Employers are entitled to a refundable tax credit counting against the employer's payroll tax for each quarter, equal to 100% of the qualified paid sick leave wages paid by the employer during that period.

## Are there any Exceptions?

Employers who are health care providers or emergency responders may elect to exclude their employees from these provisions.

The U.S. Department of Labor may exempt small businesses with fewer than 50 employees where the requirements would "jeopardize the viability of the business."

## When Does it Take Effect?

These requirements go into effect on April 2, 2020, and expire on December 31, 2020.

Employers should note that they must not only comply with these newly enacted requirements, but also any previously existing, and soon to be enacted federal/ state paid sick leave laws, and family medical leave laws that apply. Employers must further make sure they are complying with leave policies contained in their own company policies.