



## **Families First Coronavirus Response Act**

March 19, 2020

On March 18, 2020, Congress enacted the Families First Coronavirus Response Act. Three (3) components of the Act will directly affect employers and warrant immediate discussion: **Division C** - The Emergency Family and Medical Leave Expansion Act; **Division E** - The Emergency Paid Sick Leave Act; and **Division G** - Tax Credits for Paid Sick and Paid Family And Medical Leave Act. It is important to note that although this Act was signed into law yesterday, it will not take effect until fifteen (15) days after the enactment date.

### **Division C - The Emergency Family and Medical Leave Expansion Act:**

**Effective Date:** Effective fifteen (15) days after the enactment on March 18, 2020, through December 31, 2020.

**Summary:** The Emergency Family and Medical Leave Expansion Act creates paid FMLA leave for a “Public Health Emergency”. Under the Act, a Public Health Emergency is defined as an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

**Employers:** The Act is applicable to employers with fewer than five hundred (500) employees.

**Employees:** Paid leave will be available to employees who have been working for at least thirty (30) days. It is unclear if the days must be consecutive. Employers should note that this is a much broader standard than traditional FMLA leave, and employees are not required to satisfy the traditional FMLA eligibility requirements. An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of Section 3102 – Amendments to the Family Medical Leave Act of 1993.

**Leave Entitlement:** The Act creates twelve (12) weeks of leave. The first ten (10) days of such leave may consist of unpaid leave. An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave, but an employer may not require an employee to use such leave. After the first 10 days, the employer shall provide paid leave for each day of leave that an employee takes after taking the ten (10) day unpaid leave. An employee qualifies for paid leave under the Emergency Family and Medical Leave Expansion Act if the employee is unable to work (or telework) due to a need for leave to care for a son or daughter under 18 years of age if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

**Pay Calculation:** After the first ten (10) days of leave, the employer must pay the employee two-thirds (2/3) of an employee’s regular rate of pay for the number of hours the employee would otherwise be normally scheduled to work. Paid Leave is subject to a limit of \$200.00 per day and \$10,000.00 in the aggregate.

In the case of an employee whose schedule varies from week to week, to the extent the employer is unable to determine with certainty the number of hours the employee would have worked, calculate by using the average number of hours the employee was scheduled per day over the six (6) month period ending on the date that the employee takes leave, including hours for which the employee took leave of any type.

If the employee did not work over such a period, then use the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

### **Division E - The Emergency Paid Sick Leave Act:**

**Effective Date:** Effective fifteen (15) days after the enactment on March 18, 2020, through December 31, 2020.

**Summary:** The Emergency Paid Sick Leave Act creates two (2) weeks of Paid Sick Leave for reasons related to COVID-19.

**Employers:** This Act is applicable to employers with fewer than five hundred (500) employees.

**Employees:** Paid leave will be available to all current employees, with no minimum term of service or eligibility requirements. An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application 5102 (a) – Paid Sick Time Requirement. The leave will not run concurrently with any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave.

**Leave Entitlement:** Qualifying reasons to take paid sick leave include:

1. The employee is subject to Federal, State, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in Section 1, above, or has been advised as described in Section 2, above.
5. The employee is caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider is unavailable due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

**Pay Calculation:** The amount of pay required will depend on the reason for taking emergency paid sick leave. If the employee is taking leave due to reasons set forth in Sections 1-3, above:

- Leave will be paid at the employee's regular rate of pay, the federal minimum wage, or the state minimum wage, whichever is greater.
- Paid leave will be limited to \$511 per day and \$5,110 in the aggregate.

If the employee is taking leave due to reasons set forth in Sections 4-6, above:

- Leave will be paid at two-thirds (2/3) the regular rate of pay.
- Paid leave will be limited to \$200 per day and \$2,000 in the aggregate.

For full-time employees, two (2) weeks will be calculated at eighty (80) hours. For part-time employees, two (2) weeks will be calculated by the number of hours the employee works on average in two (2) weeks. If the employer is unable to determine with certainty the number of hours the employee would have worked, then two (2) weeks should be calculated by using the average number of hours the employee was scheduled per day over the last six (6) months, including time taken for leave of any type.

If the employee did not work over such a period, then use the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

**Guidance:** Guidance on calculations will be released fifteen (15) days from the enactment of this Act.

**Posting Requirement:** Employers will have a posting requirement. The required posting will be released seven (7) days from the enactment of this Act.

**Division G - Tax Credits for Paid Sick and Paid Family and Medical Leave Act:**

**Effective Date:** Effective fifteen (15) days after the enactment on March 18, 2020 through December 31, 2020.

**Summary:** Private employers with five hundred (500) or fewer employees required to provide COVID-19 related paid leave are eligible for a One Hundred Percent (100%) refundable payroll tax credit on wages paid for leave. Tax credits would be administered by the IRS and be credited against employer-side payroll tax liability, with any excess refunded to the employer. Please seek the advice of a Tax Attorney or Certified Public Accountant for more information on potential tax credits related to this Act.

**Note:** Please be aware that changes in governmental guidance, and even to underlying laws, are occurring on almost a daily basis, which will affect the analysis of legal issues related to COVID-19. We will do our utmost to keep you updated on these changes.