



What ALL Employers Need to Know About the Families First Coronavirus Response Act

On March 18, 2020, the U.S. Senate passed the Families First Coronavirus Response Act (“FFCRA”), which had been approved by the House of Representatives. President Trump signed the legislation into law the same day. As adopted into law, the final version of FFCRA contains some modifications from the House version we posted about earlier. This summary has been updated to reflect the provisions of FFCRA as enacted into law.

The provisions of FFCRA go into effect on APRIL 2, 2020, and apply to ALL employers with less than 500 employees. YOU NEED TO TAKE STEPS NOW TO ENSURE YOU ARE READY TO COMPLY WITH THESE PROVISIONS STARTING APRIL 2, 2020.

Emergency Family and Medical Leave Act (FMLA) Expansion

FFCRA provides for an emergency expansion of the Family and Medical Leave Act of 1993 (FMLA) which applies to **all employers with less than 500 employees**. This is a significant change, as other FMLA provisions only apply to employers with **50 or more employees**.

The FMLA Expansion Act provides expanded “emergency” family and medical leave for employees who have been on the job for at least 30 days. These employees have the right to take up to 12 weeks of job protected leave to care for a child whose school or childcare center has been closed because of the coronavirus public health emergency.

The first 10 days of leave may be unpaid. The employee may elect to use any accrued vacation leave, personal leave, or medical or sick leave during this initial period, but the employer cannot require it. After the initial 10 days has expired, the eligible employee is entitled to up to 12 weeks total of job-protected FMLA leave to care for their child. During this leave, the employer is required to pay full-time employees 2/3 of their regular rate, for the number of hours they would be normally scheduled. This amount is capped at \$200/day, or \$10,000 in the aggregate. If an

employee is part time or has irregular hours, their pay is based on the average number of hours they worked in the prior 6 months, at 2/3 their regular rate. If the employee has not worked for the employer for 6 months at the time they take Emergency FMLA, they are entitled to the average number of hours that they would normally be scheduled to work.

Emergency FMLA leave is generally “job-protected,” meaning the employer must restore employees to their prior positions (or an equivalent) upon the expiration of their need for leave. The FFCRA contains an exception to this requirement for employers with fewer than 25 employees, if the employee’s position no longer exists following leave due to operational changes occasioned by a public health emergency (*Example*: a dramatic downturn in business caused by the COVID-19 pandemic leads to elimination of the employee’s position), subject to certain conditions.

The Act also seeks to protect small businesses that may be harmed by the imposition of these new rules. The Act grants the Secretary of Labor the authority to issue regulations to exempt some small businesses with fewer than 50 employees. No regulations have as yet been proposed by the Department of Labor, so we will have to wait and see how this “exemption” unfolds.

Emergency Paid Sick Leave Act

Another significant portion of FFCRA is the requirement to provide paid sick leave specifically for coronavirus related absences. This provision also applies to **all** employers with fewer than 500 employees.

Employers must provide 80 hours of paid sick leave for employees who are unable to work due to any of the following reasons:

- (1) the employee is subject to a 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 because of COVID-19;
- (3) the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (4) the employee is caring for an individual subject or advised to quarantine or isolation;
- (5) the employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions; or
- (6) the employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Significantly, the act requires that this 80 hours of “Emergency Paid Sick Leave” is in addition to any regular sick time or PTO that an employer provides. However, this additional paid sick leave can only be used for the specific absences described above. It cannot be used for other illnesses or absences. Also, there is no requirement that the employee have worked for at least 30 days, as with Emergency FMLA. All employees are immediately eligible.

Employees are entitled to their full hourly rate if they are absent due to their own illness or quarantine (reasons #1, 2 or 3 above) – up to a maximum of \$511/day. If the employee is absent for reasons (4), (5) or (6) above – to care for a child or family member – then the paid sick time is paid at 2/3 their regular rate, capped at \$200/day. Please note an employee may elect to use this Emergency Paid Sick Leave in lieu of the initial 10 unpaid days if they also qualify for Emergency FMLA leave, but they are not required to.

Emergency Paid Sick Leave does not carry over to the following year.

Please note that the requirements of FFCRA are currently set to expire as of December 31, 2020.

Tax Credits

Employers that are subject to the Emergency Paid Sick Leave and the Emergency FMLA provisions of FFCRA will receive tax credits that will be applied to the employer portion of the Social Security payroll tax.

The sick leave credit for each employee that takes leave to care for themselves would be for wages up to \$511 per day per individual, or \$200 per day per individual, if the employee is caring for a family member or a child whose school has closed.

The family leave credit would be for wages up to \$200 per day per individual while they are receiving paid leave.

The Act provides for claiming these credits on a quarterly basis through payroll taxes. Undoubtedly the IRS and Department of Labor will need to adopt regulations and guidelines for implementing these credits. Until we have more specific guidance, however, it is crucial that your business keep track of all compensation paid under the provisions of FFCRA, either due to Emergency FMLA leave or due to Emergency Paid Sick Time, so that you can claim the appropriate tax credits in the future.

If you would like to discuss the Families First Coronavirus Response Act and what responsibilities your business may have, the attorneys at Loomis, Ewert, Parsley, Davis & Gotting are happy to discuss this with you. Please contact Kevin J. Roragen kjroragen@loomislaw.com or call us at 517-482-2400.