

Updates

March 19, 2020

Congress Passes the Families First Coronavirus Response Act

In a 90-8 vote, the U.S. Senate passed the Families First Coronavirus Response Act. The act expands unemployment benefits, mandates job protected paid and unpaid leave for reasons related to coronavirus, and requires certain employers to pay emergency sick leave. These provisions go into effect April 2, 2020, (15 days following signature by the president) and are in effect until December 31, 2020.

The Emergency Family and Medical Leave Expansion Act

The act expands existing provisions of the Family and Medical Leave Act (FMLA) to provide unpaid and paid job protected leave. The FMLA now includes a "Qualifying Need Related to a Public Health Emergency" for employees who cannot work or telework due to the need to care for a son or daughter under the age of 18 whose school or place of care has closed, or because their care provider is unavailable.

The first 10 days of leave may be unpaid or an employee may elect to substitute other employer-provided leave, such as vacation leave, sick leave, or personal leave. If needed for a coronavirus-related child care purpose, the remaining 10 weeks of leave must be paid at 2/3 the regular rate of pay, but not to exceed \$200 per day and \$10,000 in the aggregate.

The expanded provisions of the act apply to employers with fewer than 500 employees. The U.S. secretary of labor, however, may exclude certain health care providers who employ emergency responders and small businesses with fewer than 50 employees where requirements of the act would jeopardize the business as a going concern. An employee is entitled to restoration to their position after exhausting leave related to the coronavirus except where the employer has fewer than 25 employees, the position no longer exists for economic reasons related to the coronavirus, and the employer attempts to find an equivalent position.

The Emergency Paid Sick Leave Act

The act also mandates employers to provide 80 hours of paid sick leave to full-time employees who are unable to work or telework for reasons noted below. An employee's sick time rate of pay is based on the employee's normal earnings capped at the following amounts:

- The employee is subject to a federal, state, or local quarantine or isolation order (**\$511/day**)
- The employee has been advised by a health provider to self-quarantine (**\$511/day**)
- The employee is experiencing symptoms and seeking a diagnosis (**\$511/day**)
- The employee is caring for a person subject to an order to quarantine or was advised to quarantine (**\$200/day**)
- The employee is caring for a son or daughter under the age of 18 due to a school or care provider closure or unavailability (**\$200/day**)
- The employee is experiencing any other substantially similar condition (**\$200/day**)

An employer of an employee who is a healthcare provider or emergency responder may elect to exclude an employee from application of this section.

The newly mandated paid sick time is in addition to any leave currently provided by employers. An employee may use the leave immediately and an employer may not require an employee to use other paid leave before the emergency paid sick time. The sick time leave benefit expires when the need for leave expires.

Notably, employers with more than 500 employees are exempt from the act. The secretary of labor also may exempt small business with fewer than 50 employees from paid leave to care for a child due to school or care closure.

Expansion of Unemployment Benefits and Tax Credits for Employers.

The act provides emergency unemployment insurance benefits to states that see an increase in unemployment applications, including waivers of waiting periods and proof of seeking work. Employers would also receive a tax credit for qualified sick leave benefits paid under the bill.

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