



Coronavirus Response – “Families First Coronavirus Response Act”

Congress enacted and the President signed the “Families First Coronavirus Response Act” (the “FFCRA”) into law. The FFCRA goes into effect **April 2, 2020**.

The FFCRA is temporary. It provides benefits to eligible employees impacted by the pandemic, and it is in effect through December 31, 2020.

The FFCRA implements paid sick leave requirements and amends the Family and Medical Leave Act by expanding eligibility for protected leave and by requiring payments to employees taking childcare leave due to the pandemic.

Covered employers are required to fund the new paid leave requirements, but private employers are entitled to tax credits to offset wages paid for qualified leave.

Covered Employers

The FFCRA covers government/public sector employers and employers with fewer than 500 employees. However, the FFCRA also provides that the Secretary of Labor may exempt the following from its requirements:

- health care providers (the FFCRA incorporates by reference the FMLA definition of “health care provider”),
- emergency responders, and
- small employers with less than 50 employees who can establish that compliance would jeopardize the viability of their business.

In addition, the FFCRA permits covered employers to exclude “an employee who is a health care provider or an emergency responder” from receiving expanded FMLA coverage or emergency paid sick leave.



Our firm will continue to provide updates concerning the Secretary of Labor's actions to exempt health care providers, emergency responders, and employers with less than 50 employees from the FFCRA's requirements.

Public Health Emergency Leave

The FFCRA creates Public Health Emergency Leave ("PHEL"), which requires covered employers to provide up to 12 weeks of job-protected FMLA leave for a "qualifying need" to employees with at least 30 days of employment. A "qualifying need" exists if eligible employees are unable to work (or telework) because they need to care for a child under 18 years of age due to closure of the child's school or place of childcare, or because the childcare provider is otherwise unavailable due to the current public health emergency.

The first 10 days of PHEL may be unpaid. Eligible employees may use available paid leave while they are on PHEL, but employers may not require use of such leave. Eligible employees may elect to receive emergency paid sick leave, discussed below, during the first 10 days of PHEL, rather than use their available paid leave (if any).

Eligible employees who remain on PHEL beyond 10 days are entitled to receive up to 10 weeks of paid leave at two-thirds of the employee's regular pay rate and work schedule, up to a maximum of \$200 per day and up to an aggregate total of \$10,000.

Emergency Paid Sick Leave

The FFCRA requires government/public sector employers and employers with fewer than 500 employees to provide up to 80 hours of emergency paid sick leave to eligible full-time employees who experience any of the following:

- are subject to a federal, state, or local quarantine or isolation order due to COVID-19;
- are advised by a healthcare provider to self-quarantine due to COVID-19 symptoms;
- need to obtain a medical diagnosis or receive medical care due to COVID-19 symptoms;
- are required to care for or assist an individual who is under self-quarantine or is subject to a quarantine order due to COVID-19; or
- must care for a child if the school or place of childcare is closed or if childcare is otherwise unavailable due to COVID-19.

Unlike the 30-days of employment required to be eligible for Public Health Emergency Leave ("PHEL"), discussed above, affected employees are entitled to receive emergency paid sick leave, **regardless of their length of employment**, including seasonal and temporary employees. The emergency paid sick leave requirements are as follows:



- Full-time employees are entitled to receive up to 80 hours of paid leave.
- Part-time employees are entitled to receive up to 2 weeks' worth of paid leave based on the number of hours they work, on average, over a 2-week period.
- Employees who work variable hours each week are entitled to receive up to 2 weeks' worth of paid leave based on the number of hours they worked, on average, during the preceding 6 months.

For employees who need leave because they are affected by COVID-19 (i.e., quarantined, ordered self-quarantined, or tested or treated for COVID-19), emergency paid sick leave must be paid at the employee's regular rate of pay, up to a maximum of \$511 per day and up to an aggregate total of \$5,100.

For employees who need leave time because they must care for an individual affected by COVID-19 or for childcare reasons (but the employee is not quarantined, ordered self-quarantined, to tested or treated for COVID-19), the paid leave is paid at two-thirds of the employee's regular rate of pay, up to a maximum of \$200 per day and up to an aggregate total of \$2,000.

Eligibility to receive paid sick leave ends on the next scheduled shift following an employee's return to work after receiving emergency paid sick leave.

Covered employers may not require employees to use any form of paid leave before receiving emergency paid sick leave. For covered employers with existing paid leave policies, emergency paid sick leave must be in addition to existing paid leave provided by the employer. Covered employers are prohibited from changing any of their paid leave policies to avoid being subject to this requirement.

Covered employers are also prohibited from requiring employees to identify a replacement employee as a prerequisite to receiving emergency paid sick leave. The FFCRA includes anti-retaliation provisions and imposes penalties (i.e., the same as FLSA) for unlawful denial of emergency paid sick leave.

Tax Credits for Public Health Emergency Leave and Emergency Paid Sick Leave

The FFCRA provides that private employers are eligible to receive a tax credit equal to 100% of the Public Health Emergency Leave and Emergency Paid Sick Leave paid by employers each calendar quarter. The tax credits, however, do not apply to government/public sector employers.

If you have questions, please contact a member of our Labor and Employment Law Practice Group.



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