

## HR Answers Release, March 19, 2020

**ALERT: Families First Coronavirus Response Act; effective April 2, 2020 – December 31, 2020.**

The Families First Coronavirus Response Act was signed yesterday by our president. This is an economic stimulus plan aimed at addressing the impact of the COVID-19 outbreak on Americans and introducing paid sick leave and an expanded family and medical leave act to the nation's employers impacted by COVID-19 and those serving as caregivers for individuals with COVID-19. In this ALERT, we will focus on the provision that impact employers and their responsibilities to employees.

### **EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT**

- **Expanded Coverage and Eligibility** – The Act significantly amends and expands FMLA on a temporary basis.

#### **Coverage:**

**Previous Version:** Employers required to provide FMLA coverage at 50 or more employees

**New Version:** Employers with **fewer than 500 employees** required to provide FMLA coverage.

#### **Eligibility:**

**Previous Version:** Employee must have worked at least 1,250 hours during the 12 months prior to the start of FMLA leave.

**New Version:** Lowers the eligibility requirement such that any employee who has worked for the employer for at least 30 days prior to the designated leave may be eligible to receive paid family and medical leave.

As a result, thousands of employers not previously subject to the FMLA (generally, those with less than 50 employees) may be required to provide job-protected leave and pay to employees for a COVID-19 coronavirus-designated reason.

- **Exclusion from FMLA Coverage** - The Act now includes language allowing the Secretary of Labor to make exclusions.

**Potential exclusion of healthcare providers and emergency responders** from the definition of employees who can take such leave.

**Potential exemption to small businesses with fewer than 50 employees** if the required leave would jeopardize the viability of their business.

- **Expanded qualifying event for Emergency Leave** – Any individual employed by the employer for at least 30 days (rather than 12 months) before the first day of leave, may take up to **12 weeks of job-protected leave** to allow an employee,

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who is unable to work or telework to care for the employee's child (under 18 years of age) if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency. *Note: If you read prior versions of the act you may have anticipated additional qualifying events. This is now the **only new additional** qualifying need for Emergency FMLA as signed by the President.*

- **Paid Leave** – The first 10 days Emergency FMLA may be unpaid. During this 10-day period, an employee may elect to substitute any accrued paid leave (like vacation or sick leave) to cover some or all of the 10-day unpaid period. After the 10-day period, the employer generally must:

Pay **full-time** employees at **two-thirds the employee's regular rate** for the number of hours the employee would otherwise be normally scheduled. The new Act now limits this pay entitlement to \$200 per day and \$10,000 in the aggregate per employee.

Pay for employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking Emergency FMLA. Employees who have worked for less than six months prior to leave are entitled to the employee's reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.

- **Job Restoration** – Employers with **25 or more employees** will have the same obligation as under traditional FMLA to return any employee who has taken Emergency FMLA to the same or equivalent position upon the return to work. However, employers with **fewer than 25 employees** are generally excluded from this requirement if the employee's position no longer exists following the Emergency FMLA leave due to an economic downturn or other circumstances caused by a public health emergency during the period of Emergency FMLA. This exclusion is subject to the employer making reasonable attempts to return the employee to an equivalent position and requires an employer to make efforts to return the employee to work for up to a year following the employee's leave.

### EMERGENCY PAID SICK LEAVE ACT

- **Reasons for Paid Sick Leave** – This portion of the new Act also significantly changed since we first saw it.

The Act now allows an eligible employee to take paid sick leave because the employee is:

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1. Subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. Advised by a health care provider to self-quarantine due to COVID-19 concerns;
3. Experiencing COVID-19 symptoms and seeking medical diagnosis;
4. Caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
5. Caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
6. 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. (no similar conditions are currently specified).

It is important to note that caring for another who is subject to an isolation order or advised to self-quarantine as described above is not limited to just family members.

- **Eligibility** – This provision requires employers with fewer than 500 employees to provide full-time employees (regardless of the employee's duration of employment prior to leave) with **80 hours of paid sick leave at the employee's regular rate** (or two-thirds the employee's regular rate to care for qualifying reasons 4, 5, or 6 listed above). An important change to this section provides an exception for employers who are healthcare providers or emergency responders at their election.
- **Cap on Paid Sick Leave Wages** – This Act also places limits on paid sick leave. Specifically, paid sick leave wages are limited to \$511 per day up to \$5,110 total per employee for their own use and to \$200 per day up to \$2,000 total to care for others and any other substantially similar condition.
- **Carryover and Interaction with Other Paid Leave** – This paid sick leave will not carry over to the following year and may be in addition to any paid sick leave currently provided by employers.
- **Calculating Rate of Pay** – Employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking paid sick leave. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work over a two-week period. A business employing fewer than 500 employees is required, at the request of the employee, to pay a full-time employee for 80 hours of mandated emergency paid sick leave instead of the initial 10 days of unpaid leave permitted

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by the Emergency Family and Medical Leave Expansion Act (summarized above).

### The Act also covers the following:

- Tax Credits for Paid Sick And Paid Family And Medical Leave (Contact your tax advisor)
- Insurance Coverage for Testing For COVID-19 (Contact your insurance provider or broker)
- Emergency Unemployment Insurance Stabilization and Access Act Of 2020 (see below for links to your state)

Oregon Unemployment Insurance Website:

<https://www.oregon.gov/employ/unemployment/pages/default.aspx>

Washington Unemployment Insurance Website:

<https://esd.wa.gov/unemployment>

California Unemployment Insurance Website:

<https://www.edd.ca.gov/unemployment/>

Alaska Unemployment Insurance Website:

<https://labor.alaska.gov/unemployment/>

Idaho Unemployment Insurance Website:

<https://labor.idaho.gov/dnn>

Nevada Unemployment Insurance Website:

<http://ui.nv.gov/>

### NEXT STEPS

Once this bill is enacted, employers with fewer than 500 employees will not only need to adhere to the above leave requirements within 15 days, but such employers will also be required to provide **notice to their employees through postings and policies.**

In addition to this federal Act, many states are proposing similar emergency legislation to enact or expand their own paid sick leave or family and medical leave laws to cover coronavirus-related issues. **Some of these state laws may be in addition to these new requirements at the federal level.**