



SUMMARY OF THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

President Trump signed the Families First Coronavirus Response Act (H.R. 6201) on March 18, 2020. There are two key pieces of the Act that will affect employers:

- (1) the **Emergency Family Medical Leave Expansion Act**, which amends and supplements the FMLA (Division C, Section 3101); and
- (2) the **Emergency Paid Sick Leave Act** (Division E- Section 5101).¹

It appears these two provisions supplement one another—i.e., it is possible for employees to be entitled to paid sick leave **and** paid emergency FMLA leave, if the conditions are met. Below is a brief summary of both sections.

THE EMERGENCY FAMILY MEDICAL LEAVE ACT

- **Trigger:** This legislation adds “**qualifying need related to a public health emergency**” to the list of things that trigger FMLA protection.
 - A “qualifying need” includes the employee is unable to work (or telework) due to the need to **care for a son or daughter under age 18 who attends a school or daycare is closed or the childcare provider is unavailable** for reasons related to the public health emergency.
 - “Public health emergency” is defined as an emergency with respect to COVID-19 as declared by a Federal, state or local authority.
 - “Childcare provider” is defined as a provider who receives compensation for providing child care services on a regular basis.
- **Coverage:** The Emergency FMLA applies to different employers and employees than does the FMLA, so it is important that business be careful to identify whether they are subject to the act, and if so which employees are covered.
 - “**Employee**” is an employee **employed for at least 30 calendar days**—shorter than the FMLA, and does not include an hours requirement.
 - “**Employer**” is a company with **less than 500 employees**; there is **no minimum size** per the statute, though the **DOL is able to promulgate a regulation exempting businesses with fewer than 50 employees** from if the imposition of such requirements would jeopardize the viability of the business as a going concern—businesses with less than 50 employees should monitor when and if such a regulation is adopted.
- **Amount of Leave:** It appears the Emergency FMLA can last up to 12 weeks, with no mention of altering or supplementing the standard length of available FMLA leave.

¹ The Act is far-ranging and covers a variety of issues, ranging from enhanced unemployment insurance to the SNAP program and the safety of healthcare workers. These provisions are beyond the scope of this Quick Reference, however it is worth noting the Act also provides for tax credits related to the two pieces summarized here.



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- **Pay:** The **first 10 days of sick leave may be unpaid**. An employee **may elect** to substitute policy-based paid leave, however an **employer cannot require** the employee to use policy-based paid leave.
 - **Days 11 and beyond require pay at a rate of at least 2/3 the employee's regular rate of pay calculated as the number of hours the employee would otherwise normally be scheduled to work.**
 - If an employee's hours vary from week to week, then the average number of hours preceding the leave shall be used to determine the number of hours to be paid.
 - If an employee has not worked 6 months, then the average number of hours the employee was expected to work at the time of hire must be used.
 - **Notwithstanding an employee's regular rate, paid leave shall not exceed \$200 per day and \$10,000 in the aggregate.**
- **Employee Notice:** If leave is foreseeable, then the employee must provide as much notice as is practicable.
- **Restoration:** The FMLA **generally requires employers restore employees to their same or equivalent position** upon expiration of FMLA leave. The **Emergency FMLA modifies this obligation** for employers that **employ less than 25 employees, so long as the following conditions are met**: (1) the employee takes leave for a school or daycare closure; (2) the employee's position does not exist any longer due to economic conditions or operational changes caused by COVID; (3) the employer makes reasonable efforts to restore the employee to an equivalent position with equivalent pay and benefits; and (4) the employer makes reasonable efforts within one year after either the date on which qualified leave concludes or the date that is 12 weeks after the date leave commences, whichever is earlier, to offer the employee an available equivalent position.
- **Dates in Effect:** The Emergency FMLA will **go into effect not later than 15 days after enactment**. Based on a March 18, 2020 signature, that means it will **go into effect not later than April 1, 2020**. It **will expire on December 31, 2020**.

THE EMERGENCY PAID SICK LEAVE ACT

- **Employer Obligation:** Companies “shall” provide “paid sick leave to an employee is unable to work (or telework) for 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** 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 subparagraph (1) or has been advised as described in paragraph (2).



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- (5) The **employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed**, or the child care provider of such son or daughter 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.
- **Coverage:** The Emergency Paid Sick Leave Act is unique in what employers it does and does not cover.
 - “**Employee**” is defined like it is under the Fair Labor Standards Act, which means a broad interpretation. **Importantly, there is no duration of employment required..**
 - “**Employer**” is similar to those covered by the Emergency FMLA—that is, a company with *less than 500* employees. Again, there is **no minimum size** per the statute, though the **DOL is able to promulgate a regulation exempting businesses with fewer than 50 employees** from if the imposition of such requirements would jeopardize the viability of the business as a going concern—businesses with less than 50 employees should monitor when and if such a regulation is adopted.
- **Duration:** The length of paid leave available depends on the employee’s regular schedule.
 - Full-time employees get 80 hours of paid sick leave.
 - Part-time employees get a prorated amount based on the average hours over a 2-week period prior to leave.
- **Pay:** Paid leave shall be provided for qualifying reasons for the specified duration.
 - **For reasons 1-3 above** (under Employer Obligation), employees receive **full regular rate of pay, capped at \$511 per day with an aggregate limit of \$5,110**
 - **For reasons 4-6 above** (under Employer Obligation), employees receive **2/3 regular rate of pay, capped at \$200 per day with an aggregate limit of \$2,000.**
 - Unused leave is not paid out upon separation, and does not carry over into 2021.
- **Notice:** Employers are required to post a DOL-provided notice in a conspicuous place on the premises, which the DOL must produce within 7 days of enactment (March 25, 2020).
- **Restrictions:**
 - An employer **cannot require an employee**, as a condition of the paid sick leave under the Act, **to find coverage**.
 - An employer **cannot require an employee to use other paid leave** provided by the employer to the employee **before the employee uses the paid sick time** under the Act.
- **Employer Policies:** This leave is **in addition to employer-provided paid leave**.



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- **Prohibited Acts:**
 - **Failure to provide paid leave** – Considered failure to pay minimum wages under the FLSA, subject to penalties of FLSA.
 - **Retaliation** – Considered retaliation under the FLSA.
- **Dates in Effect:** The Emergency Paid Sick Leave Act will **go into effect not later than 15 days after enactment**. Based on a March 18, 2020 signature, that means it will **go into effect not later than April 1, 2020**. It will **expire on December 31, 2020**.
- **Additional Guidance:** The Department of Labor will be issuing additional guidance within 15 days of enactment (April 1, 2020).

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