

# Families First Coronavirus Response Act

## *An Employer Overview*

### WHAT'S INCLUDED IN THIS OVERVIEW:

- Response Act Background
  - Emergency Paid Sick Leave
  - Expanded Family Medical Leave Act (FMLA) Expansion
  - Payroll Tax Credits
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### BACKGROUND

On March 18, President Donald Trump signed into law the **Families First Coronavirus Response Act (FFRCA)** to provide economic relief and aid in response to the COVID-19 pandemic. This new legislation will have a significant impact on businesses and their employees across the country.

The FFRCA will take effect on **April 1, 2020** and expire on **December 31, 2020**. There are three specific provisions that apply to employers:

1. Emergency Paid Sick Leave
2. Family Medical Leave Act (FMLA) Expansion
3. Payroll Tax Credits

### WHO IS AFFECTED?

The FFRCA applies to private-sector employers with **fewer than 500 employees** and certain public employers.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

# EMERGENCY PAID SICK LEAVE

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## THE BASICS

Under the Response Act's Emergency Paid Sick Leave, applicable employers are required to provide:

- Full-time employees with **80 hours of paid leave**
- Part-time employees with the number of hours that the employee works *on average* over a two-week period

*NOTE: This leave applies to **all employees** under a covered employer.*

## QUALIFYING REASONS FOR LEAVE

There are six situations under which an employee can take Emergency Paid Sick Leave:

1. In response to a federal, state or local quarantine order related to COVID-19
2. To self-quarantine due to a request by a medical provider
3. Experiencing symptoms of COVID-19 and seeking testing or treatment
4. To take care of family members ordered to quarantine
5. To care for children who cannot go to school or childcare due to coronavirus-related closures
6. If the employee has a related medical condition specified by the Department of Health and Human Services

## PAID LEAVE REQUIREMENTS

Emergency Paid Sick Leave is to be paid at an employee's regular rate of pay. The amount that employers are required to pay is capped at the following:

- For situations 1-3: **\$511 per day, or \$5,110 total over a 2-week period**
- For situations 4 or 6: **\$200 per day, or \$2,000 total over a 2-week period**
- For situation 5: **\$200 per day** (or \$12,000 total over a 12-week period, which includes 2 weeks of paid sick leave followed by 10 weeks of paid expanded Family & Medical Leave)

## IMPORTANT CONSIDERATIONS

- Employers may choose to pay more than the above limits, but the payroll tax credit is limited to the amounts set forth in the Response Act.
- Emergency Paid Sick Leave must be provided in addition to any existing employer-provided sick or paid leave. *Employers **cannot** alter their existing leave policies in order to avoid compliance.*
- Employers cannot require employees to take the Emergency Paid Sick Leave in place, or instead, of any additional leave employees may have available.
- Emergency Paid Sick Leave can be activated at any time during 2020, but unused hours will not extend into 2021. *Remember, Families First Coronavirus Response Act expires December 31, 2020.*
- Employers are required to notify their employees of the availability of Emergency Paid Sick Leave. View the Department of Labor's model notice [here](#). *This must be made available within the workplace; however, employers should also distribute this notice with employees who are working remotely via electronic communication as well.*
- Employers may not require an employee to find a replacement to cover hours during the employee's time off. Nor can employers discharge or discriminate against employees requesting Emergency Paid Sick Leave.

# FAMILY MEDICAL LEAVE ACT (FMLA) EXPANSION

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## THE BASICS

Under the Response Act's Family Medical Leave Act (FMLA) Expansion, applicable employers are required to provide:

- employees with **10 weeks** of job-protected, paid leave.

*NOTE: This leave applies to all employees who have been employed with an employer for at least 30 days*

## QUALIFYING REASONS FOR LEAVE

An employee can request to use the expanded FMLA **only** if they:

- Are unable to work due to having to care for a son or daughter whose school or child-care provider is closed due to COVID-19

## PAID LEAVE REQUIREMENTS

The first ten days of an employee's expanded FMLA leave may be unpaid. During this time, an employee can elect to use their accrued vacation, personal, medical or sick leave.

The remainder of the leave must be paid at **two-thirds** the employee's regular rate of pay. The amount that employers are required to pay is capped at:

- **\$200 per day or \$10,000 for the ten-week period**

*NOTE: This is to be paid at the Regular Rate of Pay in accordance with the Fair Labor Standards Act (FLSA)*

## IMPORTANT CONSIDERATIONS

- While FMLA requirements generally only apply to employers with at least 50 employees, the emergency FMLA leave has been expanded to apply to employers with less than 500 employees.
- The Department of Labor may exempt those employers with fewer than **50 employees** who can prove that participation in the Response Act would jeopardize the viability of their business.
- The Secretary of Labor may exempt employers of health care workers and emergency responders from the expanded FMLA leave requirement

# PAYROLL TAX CREDITS

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## THE BASICS

To help employers offset the cost of providing the Emergency Paid Sick Leave and the expanded FMLA leave, the Response Act allows for applicable employers to claim tax credits for both types of leave.

Guidance thus far indicates a dollar-for-dollar tax offset against payroll taxes that normally would be deposited to the IRS refundable tax credit equal to the amount of qualifying sick and expanded leave the employers paid.

## THE SPECIFICS

Per the IRS, the taxes available for offset include:

- Federal Income tax
- Employee & Employer share of Social Security (6.2% each)
- Employee and Employer share of Medicare (1.45% each)

Under the **Emergency Paid Sick Leave**, the maximum credits available are:

- For situations 1-3 below, the maximum credit per employee per day is **\$511 or \$5,110 total**
- For situations 4-6 below, the maximum credit per employee per day is **\$200 or \$2,000 total**

Under the **Family and Medical Leave Expansion**, the maximum credits are:

- Following the ten days of unpaid leave, the maximum credit per employee per day is **\$200 or \$10,000 total** (to be paid at least 2/3 of the regular rate of pay)

## EXAMPLES

**Example 1:** Employer paid \$5,000 in qualified sick leave and has a TOTAL tax liability of \$8,000 for the pay period including taxes withheld from ALL employees. The employer can use up to \$5,000 it was going to deposit to IRS to help make the qualified leave payments. The remaining \$3,000 is due on the next regular deposit due date.

**Example 2:** Employer paid \$10,000 in qualified sick leave and has a TOTAL tax liability of \$8,000 for the pay period. The employer can use the entire \$8,000 to make the leave payments, make no federal tax deposit and request accelerated credit for the remaining \$2,000. The claim form is due to be released this week or next.

*Where an accelerated refund is requested, IRS will process in two weeks or less.*

## IMPORTANT CONSIDERATIONS

- Employers are also entitled to an additional tax credit based on the cost to maintain health insurance for ELIGIBLE employees during the leave period.
- The total credit amount will be included in the Employer's income for income tax purposes.
- The Secretary of Labor may exempt employers of health care workers and emergency responders from the expanded FMLA leave requirement

## HELPFUL RESOURCES

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### IMPORTANT LINKS

Centers for Disease Control: [www.cdc.gov](http://www.cdc.gov)

The President's Coronavirus Guidelines: [www.coronavirus.gov](http://www.coronavirus.gov)

Society for Human Resource Management: [www.SHRM.org](http://www.SHRM.org)

Congress.gov Website: [www.congress.gov](http://www.congress.gov)

HR 6201 Families First Coronavirus Response Act: <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

State Websites:

- NJ: [covid19.nj.gov](http://covid19.nj.gov)
- PA: [health.pa.gov/topics/disease/coronavirus](http://health.pa.gov/topics/disease/coronavirus)

Department of Labor: [dol.gov/coronavirus](http://dol.gov/coronavirus)

PROXUS is closely monitoring the developments of the Families First Coronavirus Response Act and will continue to update this Employer Guide as new guidance is released.

For HCM-related COVID-19 questions, please contact [COVID-19@proxushr.com](mailto:COVID-19@proxushr.com).