

**Client Alert: Federal Emergency Paid Sick Leave and FMLA Changes**

As the threat of COVID-19 spreads throughout the country, Congress is likely to pass sweeping changes to the FMLA, requiring all employers with less than 500 employees provide both paid sick leave, as well as Emergency Family Medical Leave for qualifying purposes related to the coronavirus.

The Families First Coronavirus Response Act applies to all employers with less than 500 employees, and to public employers of any size.

Here’s what employers need to know:

- Employees who have worked for an Employer for at least 30 days are eligible for Emergency Family Medical leave. Any employee who works for an employer with less than 500 employees is eligible for Paid Sick Leave.
- Employers will need to pay employees Paid Sick Leave and Emergency Family Medical Leave upfront, and seek a tax credit against the employer portion of Social Security contributions, and reimbursement through taxes, from the government later. The Treasury may issue advances to employers to cover these costs.
- Employers will need to provide Paid Sick Leave and Emergency Family Medical Leave for qualifying coronavirus-related reasons throughout 2020, but not beyond.

When trying to figure out how to organize leave plans and prepare for the impact of Coronavirus on your business, come to us, we can help. We are offering a COVID-19 Infectious Disease Toolkit that contains materials to create a plan and inform employees of prevention and leave measures. See our last Client Alert here.

**Emergency Family and Medical Leave:**

**Covered Employers:** All private sector and not-for profit employers with less than 500 employees and all public employers of any size. [The Secretary of Labor will be able to create regulations to exempt employers with fewer than 50 employees when the imposition of such requirements would jeopardize the viability of the business.](#)

**Eligibility:** Any employee who has worked at least 30 days for a covered employer is eligible for Emergency Family Medical Leave.

**Leave Entitlement:** Employees are eligible for up to 12 weeks of leave.

Employees will be able to take up to 12 weeks of Emergency Family Medical Leave [if they are unable to work or telework](#) for the following reasons:

- To care for a child ([under 18 years of age](#)) of an employee if the child’s school or place of care has been closed, or the childcare provider is unavailable due to a coronavirus.

**Wage Payments:** Emergency Family Medical Leave is partially paid by the employer, depending on the length of leave:

- [Wage Payments are capped at \\$200 per day and \\$10,000 in the aggregate for one employee’s use.](#)
- The First **10 Days** of Emergency Family Medical Leave may be unpaid. An employee may choose to use any accrued PTO during this time frame, but cannot be required to do so.
- Any leave taken beyond the **10 days** must be paid leave. An employer must pay employees 2/3’s of their regular rate of pay for the hours missed.

Kaitlyn MacLeod 3/17/20 10:45 AM  
**Deleted:** <#>To adhere with a requirement or recommendation to quarantine due to exposure to or symptoms of the coronavirus; -

Kaitlyn MacLeod 3/17/20 12:06 PM  
**Deleted:** (Pages 29-31).

Kaitlyn MacLeod 3/17/20 10:45 AM  
**Deleted:** 14

Kaitlyn MacLeod 3/17/20 12:06 PM  
**Deleted:** (Page 33-34).

Kaitlyn MacLeod 3/17/20 10:45 AM  
**Deleted:** 14

**Notice:** An employer can only request notice for the need for leave “as soon as practicable.”

**Job Protection and Reinstatement:** The default FMLA rules apply, meaning that an employer must return the employee to the same or equivalent position upon their return from leave.

Some employers with less than 25 employees may have an exception to this requirement if there is an economic downturn or other operating conditions that change due to the coronavirus. These employers must still use reasonable efforts to place the employees back in a similar position.

**Emergency Paid Sick Leave:**

**Covered Employers:** All private sector and not-for profit employers with less than 500 employees and all public employers of any size. [The Secretary of Labor has the authority to issue regulations exempting employers with fewer than 50 employees.](#)

**Eligibility:** All current employees who work for a covered employer are eligible. [Employers of health care employees or emergency responders can elect to exclude such employees from coverage.](#)

**Leave Entitlement:** Employees are eligible for 2 weeks of paid leave (80 hours for full-time employees, pro-rata based on average hours worked for part-time employees).

**Qualifying Reasons for Sick Leave for Employees who are Unable to Work or Telework:**

- [The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;](#)
- To self-isolate [as ordered by a health care provider](#) because the employee is diagnosed with COVID 19 [or to concerns related to COVID-19;](#)
- To obtain a medical diagnosis or care if the employee is experiencing the symptoms of COVID 19;
- To care for the employee’s family member who is [subject to a Federal, State or local quarantine or isolation order related to COVID-19 or has been advised to self-quarantine by a healthcare provider for concerns related to COVID-19;](#)
- [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; and](#)
- To care for the child of such employee if the school or child care has been closed due to COVID 19, [or the child care provider of such son or daughter is unavailable;](#)

**Wage Payments:** An employer must pay an employee at their regular rate of pay, [that is no more than \\$511 per day or, More than \\$5,110 in the aggregate for an employee’s own illness or quarantine, and \\$200 per day and \\$2,000 in the aggregate for any other qualifying reason.](#) When an employee takes paid sick leave for a family member or child, the employer must pay the employee 2/3s of their regular rate of pay.

**If you Already have a PTO or Sick Leave Policy:** This leave [does not diminish any rights to leave in any other Federal, State, or local law, collective bargaining agreement, or existing employer policy. An employee may choose to use the paid sick leave under this law prior to use of other leaves.](#)

An employer cannot ask an employee to find a replacement worker when using Paid Sick Leave.

**Retaliation:** Retaliation and discrimination for taking leave under this law is prohibited.

Kaitlyn MacLeod 3/17/20 12:06 PM

Deleted: (Page 35).

Kaitlyn MacLeod 3/17/20 12:06 PM

Deleted: (Page 36).

Kaitlyn MacLeod 3/17/20 12:06 PM

Deleted: (Page 54, 56).

Kaitlyn MacLeod 3/17/20 12:06 PM

Deleted: (Page 48).

Kaitlyn MacLeod 3/17/20 11:56 AM

Deleted: <#>To comply with a public official or healthcare provider order or recommendation that the physical presence of the employee on the job would jeopardize the health of others due to COVID 19 exposure .

Kaitlyn MacLeod 3/17/20 11:57 AM

Deleted: self-isolating because the family member has been diagnosed with or is experiencing symptoms of COVID 19 and/or needs to obtain medical diagnosis or care;

Kaitlyn MacLeod 3/17/20 11:58 AM

Deleted: To care for a family member if a public official or a health care provider determines that the presence of the family member in the community would jeopardize the health of others due to COVID 19 exposure

Kaitlyn MacLeod 3/17/20 12:08 PM

Deleted: (Pages 46-47)

Kaitlyn MacLeod 3/17/20 10:50 AM

Deleted: .

Kaitlyn MacLeod 3/17/20 12:04 PM

Deleted: is in addition to any PTO or sick leave that the employer already provides.

Kaitlyn MacLeod 3/17/20 12:01 PM

Deleted: The leaves would run consecutively, not concurrently. Any paid leave provided before this law goes into effect cannot be credited against the employee’s paid leave entitlement under this law. (Page 48-49)

Kaitlyn MacLeod 3/17/20 12:03 PM

Deleted: Employers are prohibited from changing their PTO or Sick Leave policies after this law goes into effect to avoid compliance. .

**Obtaining Medical Note or Other Verification:** An employer cannot require a notice for the first day of paid sick leave taken under this law. An employer can require an employee follow reasonable notice procedures in order to continue receiving paid sick time after the first day of leave.

Kaitlyn MacLeod 3/17/20 12:08 PM  
Deleted: (Page 62).

**Notice:** Employers will be required to post notice of this law and its benefits in a conspicuous place in the workplace (Page 49).

**How will Employers be Reimbursed or Credited for these Leave Programs?**

Kaitlyn MacLeod 3/17/20 12:08 PM  
Deleted: (Page 88).

Employers will be eligible for a tax credit of 100% of qualified paid sick and family leave wages an employer pays to employees for the Employer Social Security Contribution tax (Section 3111(a) of IRC) or Excise Tax (3221(a)). If an employer's obligation to pay employees for either of these leave programs exceed their yearly tax contribution to Social Security and Excise Tax, the employer will be able to seek full reimbursement through their taxes.

Treasury Secretary Mnuchin said over the weekend that his agency would advance funds to business so they can meet the paid sick-leave requirements. Employers will be able to use cash deposited with the IRS to pay sick-leave wages. For business that do not have sufficient taxes to draw from, the Treasury would make advances to cover the costs. More from the Wall Street Journal here:

<https://www.wsj.com/articles/u-s-treasury-to-help-advance-funds-to-employers-for-paid-sick-leave-11584275421>.

**Emergency Unemployment Insurance Stabilization and Access Act:** States may end up waiving their waiting period during this time of crisis in order to obtain additional stimulus funds under this law.

Kaitlyn MacLeod 3/17/20 12:10 PM  
Deleted: (page 39)

There are also additional grants that may extend the length of time states will provide benefits for.

Kaitlyn MacLeod 3/17/20 12:10 PM  
Deleted: (Page 39-43).

Kaitlyn MacLeod 3/17/20 12:10 PM  
Deleted: (Page 44).