



Families First Coronavirus Response Act Expands Family and Medical Leave and Provides Emergency Paid Sick Leave

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The Families First Coronavirus Response Act (FFCRA) takes effect on April 1, 2020 and will have a significant impact on small businesses across the country. The FFCRA expands family and medical leave and also implements emergency paid sick leave for specified reasons related to the COVID-19 pandemic.

Expanded Family and Medical Leave

Importantly, the expanded family and medical leave protections apply to employees who have been employed for at least 30 calendar days. In addition, the added protections apply to employers with fewer than 500 employees.

To qualify for the expanded family and medical leave, the employee must be “unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”

The FFCRA provides up to 12 weeks of leave to qualifying employees. The first 10 days of leave can be unpaid, although employees can use other paid benefits (i.e., vacation, PTO, etc.) to cover this period. Thereafter, full time employees must be paid at two-thirds of the employee’s regular rate of pay. However, the paid leave amount is capped at \$200 per day and \$10,000 in the aggregate per employee. Part time employees are to be paid based on the average number of hours worked over the prior six month period. Employees who worked less than six months receive payment based on the “reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.”

Employers with 25 or more employees will have the obligation to return any employee who has taken emergency family and medical leave to the same or equivalent position upon returning to work.

Emergency Paid Sick Leave

The emergency paid sick leave provided by the FFCRA applies to all employees of covered employers (those with fewer than 500 employees) regardless of the employee’s length of employment. Under the statute, an employer must provide each employee paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because:



- (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).
- (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.

In general, full-time employees receive up to 80 hours of paid sick at the employee's regular rate of pay when the leave is for reasons (1), (2) or (3) above. Paid sick leave for reasons (1), (2) or (3) is capped at \$511 per day, up to \$5,111 in the aggregate per employee.

If the leave is due to reasons, (4), (5) or (6), full time employees receive paid leave at the rate of two-thirds the employee's regular rate of pay. Paid sick leave for reasons (4), (5) or (6) is capped at \$200 per day, up to \$2,000 in the aggregate per employee.

For part-time employees, the amount of paid sick leave is equal to the number of hours that such employee works, on average, over a 2-week period. Part-time employees who work irregular schedules must be paid on the average number of hours worked in the six months prior to taking emergency sick leave. Part-time employees who have not worked for six months, are paid based on the employee's reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.

The same rate of payment (and caps on payments) that apply to full-time employees apply to part-time employees. In other words, payment is at the regular rate pay for reasons (1), (2) and (3) and two-thirds of the regular rate of pay for reasons (4), (5) and (6).



Employers with questions concerning the FFCRA may contact W. Scott Trench by e-mail at strench@bcm-law.com or by phone at (312) 334-9515.