

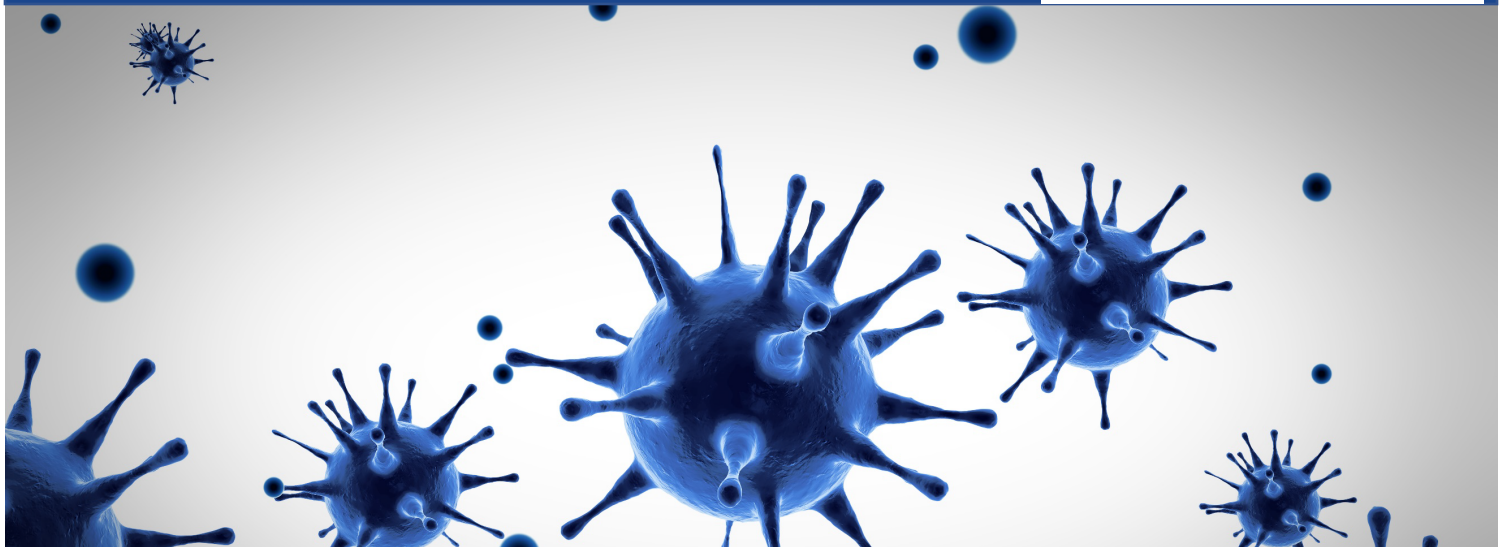
FAMILIES FIRST CORONAVIRUS RESPONSE ACT:

AN EMPLOYER'S GUIDE TO PAID SICK LEAVE
AND EMERGENCY FMLA



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“Caution is appropriate. Preparedness is appropriate. Panic is not.” ~ U.S. Surgeon General
Dr. Jerome Adams, commenting on the coronavirus outbreak

On March 18th, the Senate passed the Families First Coronavirus Response Act, 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. An earlier version of this Act (H.R. 6201) was previously passed by the House in the early hours of Saturday, March 14th before being significantly altered late Monday, March 16th. The President signed the legislation on the evening of March 18th, which means **the leave provisions will go into effect on April 2 and remain in effect until December 31, 2020.**

The new law includes many provisions to include paid sick leave for employees impacted by COVID-19 and expanded FMLA protections and compensation for those with children out of school due to COVID-19. While the law also contains provisions to increase funding for familiar benefit programs, available tax credits, and budgetary effects, this legal alert summarizes the key benefit provisions that affect paid leave for employees.

WHO IS IMPACTED?

The provisions discussed in this alert apply to all employers with fewer than 500 employees – although employers with fewer than 50 employees may later be deemed exempt by the Secretary of Labor through subsequent regulations if the law would jeopardize the business' viability. It is unclear at this time if anything will be implemented concerning large employers with 500 or more employees.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

Expanded Coverage and Eligibility

The Act significantly amends and expands FMLA on a *temporary basis*. The current employee threshold for FMLA coverage would change from only covering employers with 50 or more employees to covering those employers with fewer than 500 employees. It also 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.

Now, thousands of employers not previously subject to the FMLA may be required to provide job-protected leave to employees for a COVID-19 coronavirus-designated reason. However, the Act now includes language allowing the Secretary of Labor to exclude healthcare providers and emergency responders from the definition of employees who are allowed to take such leave, and to possibly exempt small businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business.

Reasons for Emergency Leave

Any individual employed by the employer for at least 30 days (before the first day of leave) may take up to 12 weeks of job-protected leave to

allow an employee, 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.** This is the only qualifying need for Emergency FMLA and a significant change from the prior version of the bill passed by the House over the weekend, which contained several other COVID-19-related reasons to provide Emergency FMLA.

Paid Leave

Another major change from the prior version passed from the House is the reduction of the unpaid period of Emergency FMLA. The first 10 days (rather than 14 days) of Emergency FMLA may be unpaid. During this 10-day period, an employee may elect to substitute any accrued paid leave (**including Emergency Paid Sick Leave discussed below**) to cover some or all of the 10-day unpaid period. After the 10-day period, the employer generally must pay full-time employees two-thirds of the employee's regular rate for the number of hours the employee would otherwise be normally scheduled. The Act limits this pay entitlement to \$200 per day and \$10,000 in the aggregate per employee.

Calculating Pay for Non-Full Time Employees

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

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.

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). This section provides an exception for employers who are healthcare providers or emergency responders at their election.

Cap on Paid Sick Leave Wages, Carryover, and Interaction with Other Paid Leave

Another significant change to this Act 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. 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 by the Emergency Family and Medical Leave Expansion Act (summarized above).

We will continue to monitor this rapidly developing situation and provide updates as appropriate. Make sure you are subscribed to SIA Group's alert system to gather the most up-to-date information. For further information or advice on how to satisfy notice requirements as an employer, contact consulting@siagroup.com, or review our [Pandemic Preparedness](#) page.