

## **PASSAGE OF FAMILIES FIRST CORONAVIRUS RESPONSE ACT OF 2020**

With yesterday's passage of the Families First Coronavirus Response Act of 2020, Congress has now enacted the first law that provides for comprehensive *paid* leave benefits for millions of employees throughout the United States who have been impacted by COVID-19. [FFCRA Legislation](#) Although federal quarterly tax credits are meant to defray the costs to employers, its impact will have immediate and likely long-term consequences for several employers and businesses, many of whom are already fighting for their existence.

In addition to providing paid leave, the new legislation also provides for extended unemployment benefits for states that experience an increase in worker unemployment. The Secretary of Labor is charged with creating a model notice within the next week that will spell out rights and requirements under the Act. So much will depend on the anticipated Department of Labor regulations that will be forthcoming in the next fourteen days but in the meantime, we wanted to provide this overview of the statute. As with any labor and employment law, consideration of state and local laws must also be evaluated.

As always, Labor and Employment Lawyers at Wick Phillips remain available to assist your businesses as you continue addressing this "new normal" in which we find ourselves.

### ***FAMILIES FIRST CORONAVIRUS RESPONSE ACT OF 2020***

**Effective Date: April 2, 2020**

**Sunset Date: December 31, 2020**

The Families First Coronavirus Response Act of 2020 has two provisions that provide for paid leave related to COVID-19. The provisions apply to employers with fewer than 500 employees. The FFCRA creates a new law called the *Emergency Paid Sick Leave Act* and amends an existing law called the Family Medical Leave Act of 1993 by creating a new category of eligible leave.

#### ***Emergency Paid Sick Leave (new law)***

- Employers must give emergency paid sick time to any employee for a qualifying emergency related to the coronavirus.
- A *qualified emergency related to the coronavirus* means the employee must be unable to work because:
  - a. The employee is subject to a quarantine or isolation order related to COVID-19, has been advised to self-quarantine due to concerns related to COVID-19, or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
  - b. The employee is caring for an individual who is subject to a quarantine order or who has been advised to self-quarantine related to COVID-19, the employee is caring for his or her son or daughter because the school or place of care has been closed or childcare provider is unavailable due to COVID-19 precautions; or, the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor.
- Full-time employees receive 80 hours; part-time employees receive an amount based on the average number of hours they work in a two-week period.
- Maximum amount of pay during the leave will not exceed \$511 per day (\$5,110 in aggregate) for sub-category "a" above; and \$200 per day (\$2,000 in aggregate) for sub-category "b".

- There are possible exclusions for employers with less than 50 employees (i.e., if providing it would jeopardize the viability of the business as a going concern).

**Amendments to the Family Medical Leave Act of 1993:**

- New category of FMLA leave for a “qualifying need related to a public health emergency.”
- A *public health emergency* is an emergency with respect to COVID-19.
- Public health emergency leave is limited to employees who are unable to work due to a need for leave to care for the son or daughter of such employee because 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.
- Small employers have exclusions similar to the Emergency Paid Sick Leave Law.
- Public health emergency leave is available to any employee who has been employed for 30 days (significant change from customary FMLA threshold).
- The first ten days of public health emergency leave are unpaid, unless an employee voluntarily elects to use existing accrued paid vacation leave, personal leave, or medical or sick leave to cover the initial ten-day period. [Note: [Emergency Paid Sick Leave could apply to the initial ten-day period.](#)]
- After the first ten days, the remaining period of qualified public health emergency leave is paid leave, up to the full 12 weeks of leave under the FMLA, at a rate that is at least two-thirds of the regular rate the employee would have earned under a normal work schedule, up to a maximum of \$200 per day and \$10,000 in the aggregate.
- Job restoration rights apply.

**Scenarios:**

<b>Event or condition</b>	<b>Leave available</b>
Employee has symptoms of COVID-19 and misses work to seek medical evaluation	Up to 80 hours of paid leave under Emergency Paid Sick Leave at employee’s regular rate (up to \$511 per day and \$5,110 in aggregate).
Employee is subject to a quarantine order or advised to self-quarantine due to COVID-19.	12 weeks under FMLA, which could be two weeks paid leave under Emergency Paid Sick Leave at employee’s regular rate (up to \$511 per day and \$5,110 in aggregate) and 10 weeks unpaid leave for employee’s serious health condition under existing FMLA provisions.
Employee must stay home to care for a spouse, son, daughter or parent subject to a quarantine order or who has been advised to self-quarantine related to COVID-19	12 weeks under FMLA, which could be up to 80 hours of paid leave under Emergency Paid Sick Leave at employee’s regular rate (up to \$200 per day and \$2,000 in aggregate) and 10 weeks unpaid leave to care for the employee’s spouse, son, daughter, or parent who has serious health condition.
Employee must miss work to take care of employee’s son or daughter because the son’s or daughter’s school or place of care has been closed due to COVID-19.	12 weeks under FMLA for public emergency health leave; can include two weeks paid leave under Emergency Paid Sick Leave at 100% of employee’s regular compensation (up to a maximum of \$200 per day and \$2,000 in aggregate) and ten weeks of paid leave under FMLA public emergency health leave (at two-thirds of employee’s regular rate during a regular work schedule up to a maximum of \$200 per day and \$10,000 in aggregate).
Employee misses work due to COVID-19 symptoms but not subject to quarantine order or advised to self-quarantine related to COVID-19	Up to twelve weeks of FMLA leave, which may be paid or unpaid depending on employer’s policies; employee must meet the length and hour eligibility requirements; and illness must qualify as a serious health condition.
Employee misses work to take spouse, son, daughter, or parent,	Up to twelve weeks of FMLA leave, which may be paid or unpaid depending on employer’s policies.

Event or condition	Leave available
who has COVID-19 symptoms for medical evaluation.	
Employee misses work to care for spouse, son, daughter, or parent who has COVID-19 symptoms but not subject to a quarantine order or been advised to self-quarantine related to COVID-19.	Up to twelve weeks of FMLA leave, which may be paid or unpaid depending on employer's policies; employee must meet the length and hour eligibility requirements; and illness must qualify as a serious health condition.
Employee misses work to care for an individual with COVID-19 symptoms who is not the employee's spouse, son, daughter, or parent, and who is not subject to a quarantine order or been advised to self-quarantine related to COVID-19	No federally required leave. Employee may be entitled to leave under employer's policies.

**Additional Key Points and Requirements:**

- Employers are prohibited from retaliating against employees who utilize leave provided under this Act.
- If an employer does not provide leave as required, penalties apply for failing to pay required wages.
- Employers must allow employees to first use sick leave provided for under the FFCRA, then decide to use any remaining accrued paid leave under an employer's policy. The employer **cannot** require the employee to use accrued leave under an employer policy first.
- Any paid leave provided by an employer *before* the law is effective cannot be credited against the employee's paid leave entitlement. However, hours cannot be carried over after December 31, 2020, an employee's right to take paid sick leave ends after they return from their leave.
- Employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan are also provided with leave.

**Employer Tax Credits**

The FFCRA provides for reimbursement to employers (and self-employers) for paid leave as follows:

- A refundable tax credit for employers equal to 100 percent of qualified paid sick leave wages required to be paid by the Emergency Paid Sick Leave Act that are paid by an employer for each calendar quarter. The tax credit is allowed against the tax imposed by section 3111(a) of the Internal Revenue Code (the employer portion of Social Security taxes).
- A refundable tax credit for self-employed individuals equal to 100 percent of a qualified sick leave equivalent amount for eligible self-employed individuals who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation with respect to coronavirus. For eligible self-employed individuals caring for a family member or for a child whose school or place of care has been closed due to coronavirus, the section provides a refundable tax credit equal to 67 percent of a qualified sick leave equivalent amount.

As with any labor and employment questions, please feel free to contact Wick Phillips should you wish to talk through these and any other questions.