

Families First Coronavirus Response Act: A Summary of the Family and Medical Expansion Act and the Emergency Paid Sick Leave Act

Introduction:

The Families First Coronavirus Response Act was signed by the President on March 18, 2020. The Act will take effect on April 1, 2020, fifteen days after passage. It is scheduled to expire on December 31, 2020.

The Act is organized into seven “Divisions.” Two divisions relate to employee leave from work: Division C, the **Emergency Family and Medical Expansion Act**, temporarily expands FMLA coverage to care for a child due to school or daycare closure for some employees; and Division E, the **Emergency Paid Sick Leave Act**, which provides up to 80 hours of paid sick time for certain employees. These two Acts are summarized below.

Emergency Family and Medical Expansion Act

Covered Employers	<p>All employers with 500 or fewer employees; and all public agencies are covered by this Act.</p> <p>Significant expansion from typical FMLA leave which provides coverage is limited to employers with 50 or more employees for each of 20 or more calendar workweeks in the current or preceding calendar year. Expanded employer coverage is limited to leaves for qualifying need related to a public emergency and does not extend to other FMLA qualifying leaves.</p> <p>Secretary of Labor has regulatory authority to exempt employers with fewer than 50 employees from the Act’s provisions.</p>
Eligible Employees	<p>Employed for at least 30 calendar days by the employer.</p> <p>Employee is unable to work or telework for “qualifying need.”</p> <p>Significant expansion from typical FMLA leave which provides coverage is limited to employees who have been employed for at least 12 months and have worked at least 1250 hours within the 12 months immediately preceding the need for leave. Expanded employee coverage limited to leaves for qualifying need related to a public emergency and does not extend to other FMLA qualifying leaves. The Secretary of Labor has regulatory authority to exempt health care providers and emergency responders from the definition of eligible employees.</p>

Qualifying Need for Emergency Leave	Care for employee’s son or daughter under the age of 18 if the child’s school or place of care is closed, or the child’s care provider is unavailable, due to “a public health emergency,” defined as “an emergency with respect to COVID-19 declared by a Federal, State, or local authority.”
Unpaid & Paid Leave	<p>First 10 days is unpaid. Employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave.</p> <p>After the first 10 days, the employer must pay an employee at two-thirds the employee’s regular rate for the number of hours the employee would otherwise be normally scheduled.</p> <p>If an employee has a varying schedule such that the employer is unable to determine with certainty the number of hours the employee would have worked, the employer must pay the employee for the average number of hours the employee was scheduled per day over the past 6-months (including any leave hours) or, if the employee did not work, the average hours per day the employee reasonably expected to be scheduled to work.</p> <p>Paid leave capped at \$200/ day and/or \$10,000 in total.</p>
Restoration Rights	<p>Employees are entitled to the FMLA reinstatement rights, except, employers with fewer than 25 employees are exempted from this requirement if:</p> <ul style="list-style-type: none"> • The position held by the employee when leave began no longer exists due to economic conditions or other changes in operating conditions caused by the public health emergency; • The employer made a reasonable effort to reinstate the employee to an equivalent position with similar pay, benefits, and terms and conditions of employment; <i>and</i> • The employer makes a reasonable future effort to contact the displaced employee about an equivalent position if such position becomes available. The required contact period is 1 year from the date on which the qualifying need ends, or 1 year from the date that is 12 weeks after the date the employee’s leave began—whichever is earlier.
Employee Notice Requirements	Where the need for leave under this Act is foreseeable, the employee must provide as much notice as practicable.
Certification	The Act does not reference an employer’s right to request certification or documentation of an employee’s need for leave.
Federal Tax Credits for Employers	Employers are entitled to a refundable tax credit equal to 100% of the qualified family leave wages paid by employers for each calendar quarter. The qualified family leave wages are capped at \$200 per day for each individual up to \$10,000 total per calendar quarter. Only those employers who are required to offer Emergency FMLA may receive these credits.

Interaction with Collective Bargaining Agreements	Employers who are part of multi-employer collective bargaining units may continue making contributions to any multi-employer fund, plan, or program based on the paid leave hours of each of its employees. Employers may credit income replacement benefits paid under a multi-employer benefit plan toward the paid leave benefits required under this law.
Effective Date	This Act will be effective April 1, 2020 (15 days after enactment). This Act expires on December 31, 2020.
Health Care Providers and First Responders	An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the Emergency Family Medical Expansion Act.

Paid Emergency Sick Leave Act

Employers Covered	All private employers with fewer than 500 employees. All public employers, regardless of size.
Employee Eligibility	All employees of covered employers are entitled to paid sick time provided under this Act—regardless of how long they have been employed—unless: (1) the employee is able to “telework,” or (2) the employee is a health care provider or an emergency responder and the employer elects to exclude the employee from paid sick leave eligibility. The Secretary of Labor has the authority to issue regulations excluding certain health care providers and emergency responders from eligibility under this Act. The Secretary also has the power to exempt small businesses with fewer than 50 employees.
Reasons for Paid Sick Time	Paid sick time may be used if the employee is: <ol style="list-style-type: none"> 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 concerns related to COVID-19. 3. Experiencing symptoms of COVID-19 and seeking a medical diagnosis. 4. Caring for an individual subject to an order as described in 1. or has been advised as described in 2. 5. Caring for employee’s son or daughter if the child’s school or place of care is closed or the child’s care provider is unavailable due to COVID-19 precautions. 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.

<p>Amount of Paid Sick Time</p>	<p>Full-time employees: up to 80 hours of paid sick time.</p> <p>Part-time employees: average number of hours worked over a 2-week period. For part-time employees whose schedule varies such that the employer is unable to determine with certainty the number of hours the employee would have worked, the employer shall use average number of hours the employee was scheduled per day over the past 6-months (including any leave hours) or, if the employee did not work, the average hours per day the employee would have reasonably expected to be scheduled to work.</p> <p>Once the need for emergency leave ends, the paid sick time ends at the beginning of the employee’s next scheduled work shift.</p> <p>An employee is not entitled to financial or other reimbursement for paid sick time that has not been used by such employee upon the employee’s termination, resignation, retirement or other separation from employment.</p>
<p>Calculating Paid Sick Time</p>	<p>An employee’s rate of compensation is either (1) the employee’s regular rate of pay, (2) the minimum wage rate under the Fair Labor Standards Act, or (3) the minimum wage rate in effect for the applicable State or locality, <i>whichever is greater</i>.</p> <p>An employer is required to pay two-thirds (2/3) of the employee’s eligible rate of compensation if the type of leave taken is for use described in 4, 5, or 6 above.</p> <p>Note: The Secretary of Labor is tasked with issuing guidelines by April 1, 2020, to assist employers in calculating the amount of paid sick time.</p>
<p>Limits on Paid Sick Time</p>	<p>Paid sick time is capped at</p> <ol style="list-style-type: none"> 1. \$511 per day and/or a total of \$5,110 for use described in 1, 2, or 3 above. 2. \$200 per day and/or a maximum of \$2,000 in total for use described in 4, 5, 6 above.
<p>Probationary Period & Carry Over</p>	<p>Paid sick time is available for immediate use once this Act goes into effect (April 1, 2020). Paid sick time under the Act does not carryover from one year to the next.</p>
<p>Employer Prohibitions</p>	<p>Employers cannot require employees to use employer-provided paid time off before using the leave provided under this Act.</p> <p>Employers may not discriminate against, discharge, discipline, or otherwise retaliate against employees who take leave under this Act or otherwise retaliate. Employers may not require employees who take paid sick time leave to find a replacement for their shifts.</p>

Employee Notice Requirements	After the first workday (or partial workday) that an employee receives paid sick time under this Act, an employer may require the employee to follow reasonable notice procedures in order to continue receiving paid sick time provided under this law.
Employer Notice Requirements	Employers are required to post a notice, in conspicuous places in the workplace (where notices are typically placed) that describe the requirements of this Act. Note: The Secretary of Labor is tasked with making a model notice for employers that will be publicly available on or before March 25, 2020 (within 7 days of the law’s enactment).
Certification	This Act does not include any reference to an employer’s ability to require employees to provide certification or documentation of their need for leave. However, this could be included in regulations subsequently promulgated by the U.S. Department of Labor, which are contemplated by the legislation and anticipated.
Interaction with Collective Bargaining Agreements	Employers subject to multi-employer collective bargaining agreements may continue making contributions to any multi-employer fund, plan, or program based on the paid leave hours of each of its employees. Similarly, employees who receive benefits from a multi-employer fund, plan, or program, may rely upon paid leave hours when collecting benefits.
Effective Date	April 1, 2020 (15 days after enactment). Expires on December 31, 2020.
Federal Assistance for Employers	Employers are entitled to a refundable tax credit equal to 100% of the qualified paid sick time wages paid by employers for each calendar quarter in adherence with the Emergency Paid Sick Leave Act. The qualified paid sick time wages are capped at \$511 per day (\$200 per day if the leave is for caring for a family member or child) for up to 10 days per employee.
Civil Liability	Employers who violate this Act are considered to have failed to pay minimum wages in violation of 29 U.S.C. § 206 and are subject to the penalties described in 29 U.S.C. §§ 216–217. An employer who <i>willfully</i> violates this Act via discrimination or retaliation is considered to be in violation of 29 U.S.C. § 215(a)(3) and 29 U.S.C. §§ 216–217.