

Enacted: Families First Coronavirus Response Act

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On March 18, President Trump signed the [Families First Coronavirus Response Act](#) (the “Act”), which creates the Family Medical Leave Expansion Act and Emergency Paid Sick Leave Act in order to provide protections for employees who need to take leave during the COVID-19 health crisis. Employers should be prepared for the below provisions to take effect on April 2, 2020. Below is a brief summary of the salient points of these new laws and the circumstances under which paid sick leave and the expanded family leave will be available to employees.

Emergency Paid Sick Leave Act

Who is an eligible employee?

1. Employees at companies with fewer than 500 employees
2. Employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan.

What are the “qualifying” reasons for paid sick leave?

1. The employee is under quarantine or isolation (mandated by Federal, state or locality or advised by healthcare provider).
2. The employee is exhibiting symptoms of COVID-19 and seeking a medical diagnosis.
3. The employee is caring for an individual who is subject to a quarantine or isolation (mandated by Federal, state or locality or advised by healthcare provider).
4. The employee is caring for a son or daughter whose school has been closed, or childcare provider is unavailable due to COVID-19 precautions.
5. 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.

What amount are eligible employees entitled to?

The amount an employee is entitled to varies depending upon the *type* of leave taken.

An eligible employee who uses leave for his or her own quarantine, preventive care or treatment:

1. Full-time employees are entitled to two weeks (80 hours) of fully paid time off (up to \$511 per day).
2. Part-time employees are entitled to fully paid time off (up to \$511 per day) for the typical number of hours that they work in a typical two-week period.

An eligible employee who uses leave to care for a family member or child whose school has closed, or whose child care provider is unavailable due to COVID-19:

1. Full-time employees are entitled to two weeks (80 hours) paid time off at two-thirds of their regular pay (up to \$200 per day).
2. Part Time Employees entitled to fully paid time off (up to \$200 per day) for the typical number of hours that they work in a typical two-week period.

How do I calculate hours worked for part-time employees with varying schedules?

Generally, an employer will use a number equal to an average over a six-month period (including hours for which an employee took leave). If an employee has not worked six months, the employer should use “the reasonable expectation of the employee at the time of hiring.”

Can an employer require an employee to use other paid leave first?

An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under the Act.

Does paid sick time carry over from one year to the next?

No.

When does paid sick leave terminate?

Paid sick leave terminates on an employee’s next scheduled work shift, immediately after the need for sick leave terminates.

What are an employee’s notice requirements?

After the first workday (or portion thereof) an employee receives paid sick time, an employer may require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.

What are the employer’s notice requirements?

Employers will be required to post notices conspicuously. The Secretary of Labor will make a model notice available after 7 days after the Act’s enactment.

Emergency Family and Medical Leave Expansion Act

Who is an eligible employee?

1. Employees at companies with fewer than 500 employees who have worked more than 30 days.

2. Employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan.

What are the “qualifying” reasons for paid FMLA leave?

Full-time and part-time employees are eligible for 12 weeks of job-protected leave to care for their children in the event of school closure or if their childcare provider is unavailable due to COVID-19.

What amount are eligible employees entitled to?

The first 10 days may be unpaid leave. Employers must provide paid leave for each subsequent day of qualified leave period at a rate of two-thirds the employee’s regular rate, for the number of hours the employee is regularly scheduled to work.

This amount is limited to no more than \$200 per day and \$10,000 in the aggregate.

How do I calculate hours worked for part-time employees with varying schedules?

Generally, an employer will use a number equal to an average over a six-month period (including hours for which an employee took leave). If an employee has not worked six months, the employer should use “the reasonable expectation of the employee at the time of hiring.”

Can an employee elect to use other paid leave?

An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave related to a qualifying need related to a public emergency.

What are an employee’s notice requirements?

When leave is foreseeable, an employee must give the employer as much notice as “practicable.”

Is an employee entitled to job restoration?

Employees are entitled to be restored to the position or an equivalent position. There is an exception to this requirement for employers with fewer than 25 employees, if the employee’s position no longer exists following leave due to operational changes occasioned by a public health emergency and the following conditions are met:

1. The employee takes leave under the Emergency Family Leave Medical Expansion Act
2. The position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer (i) that affect employment; and (ii) are caused by a public health emergency during the period of leave.
3. The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment.
4. The employer makes reasonable efforts during a 1 year contact period (beginning the earlier of conclusion of the qualifying need related to public health emergency or 12 weeks after the date on which the leave commences) to contact the employee if an equivalent position described in subparagraph becomes available.

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Families First Coronavirus Response Act is Enacted - Now What?

MARCH 24, 2020 AT 1:00PM EST

Is your company ready? Do you have questions about the new law? Join Kelley Drye's Labor and Employment co-chairs [Barbara Hoey](#) and [Mark Konkel](#) as they take a deep dive in the new law and the circumstances under which paid sick leave and the expanded family leave will be available to employees, share practical advice and discuss potential hidden issues such as WARN.

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