

Families First Coronavirus Response Act

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On March 14, the House passed the [Families First Coronavirus Response Act \("FFCRA" or "the Act"\) \(HR 6201\)](#). This bill is not yet a law, but probably will be voted on this week or next. If the bill is signed into law by the President (which he has promised to do), the law will take effect 15 days after signing.

The FFCRA contains two main centerpieces: (1) new paid Family and Medical Leave to deal with the COVID-19 "public health emergency"; and (2) emergency paid sick leave. This advisory addresses the most important aspects of the FFCRA. We have injected some initial guidance to employers in italics, but this advisory is not designed to address all of the many details of the Act. Please look for a deeper dive and analysis from us when the law becomes effective.

NEW PAID FMLA LEAVE FOR A "PUBLIC HEALTH EMERGENCY"

Employers: With some confusion over versions of the Act, the most current draft says it applies to employers with fewer than 500 employees, who must provide up to 12 weeks of paid leave to employees for a "public health emergency," with a right of reinstatement at the end of that leave. *Comment: The 500 employee threshold has been called the "Big Box Exclusion" and excludes large employers like Wal-Mart and McDonalds.*

Employees: The Act applies to all employees who have been employed for at least 30 days. *Comment: This is much broader than the FMLA. It does not require 12 months of employment or 1250 hours worked.*

Leave: An employee is entitled to this new leave for the following reasons:

- To adhere to an order or recommendation by a government entity or a health care provider, to quarantine due to exposure to COVID-19 or due to symptoms of COVID-19;
- To care for a family member who is at risk, and is adhering to an order that they quarantine due to exposure to or symptoms of COVID-19; or
- To care for the employee's child (under 18), if the child's school or daycare is closed, or a caregiver has or is unavailable, due to COVID-19.

Family Member: Defined as spouse, child under 18 (adopted or natural), parent, step-parent or domestic partner.

Pay: After the two weeks of fully paid leave (paid under the new Emergency Paid Sick Leave Act, covered in Part II), employees will have to be paid at a rate of no less than two-thirds of the employee's usual pay for the duration of the 12 weeks.

Comment: Employees may use accrued personal or sick leave during the first 14 days, but employers may not require employees to do so.

EMERGENCY PAID SICK LEAVE ACT

Leave: This section requires that employers with fewer than 500 employees give **all employees** up to two weeks of paid sick leave, for the purpose of:

- Quarantining or seeking a diagnosis or preventive care for coronavirus; or “self-isolate” because of a diagnosis of coronavirus;
- Caring for a family member who is quarantined or diagnosed with coronavirus; or
- Caring for a child whose school has closed, or if a child care provider is unavailable, due to coronavirus.

Pay: This sick leave must be paid at the employee’s regular rate (capped at \$511 per day), as follows:

- Full-time employees are entitled to two weeks of paid sick leave (80 hours)
- Part-time employees are entitled to the number of hours of paid sick time equal to the number of hours they work, on average, over a 2-week period.

Existing Policies: Employers who have existing paid sick leave policies must provide this leave in addition to any paid leave currently offered.

- Sick Leave policies also cannot be changed after this Act goes into effect.
- This leave does not carry over from year to year.
- The Act provides a refundable tax credit to offset the cost of this leave.

GENERAL PROVISIONS OF THE FFCRA

Notice: Employers will be required to post a notice informing employees of their rights to these new leaves.

CBAs: Employers who are part of a plan under a multiemployer collective agreement can satisfy their obligation by making contributions to that plan, provided the plan will allow employees to have time off as the Act requires.

Term: The Act expires on December 31, 2020.

Preemption: The bill expressly provides that it does not preempt existing state or local paid sick leave entitlements.

What’s Next?

The COVID-19 situation is evolving rapidly, to say the very least. The ultimate outcome of the proposed legislation—and more importantly, the scope of the crisis—can and will change daily. Employers need to react in real time, so we are monitoring this closely and will provide moment-to-moment updates as they become available.

If you have any questions, please reach out to any attorney in our Employment group.

Related Webinar

Join us on March 17, 2020 at 12:30pm ET for "Pandemic - But Don't Panic."

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