

Families First Coronavirus Response Act (UPDATE)

Barbara E. Hoey, Mark A. Konkel

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On the evening of Monday, March 16, the House amended the **Families First Coronavirus Response Act** ("FFCRA") (HR 6201) by amending the bill with what are being called "technical corrections."

The previous bill, passed by the House on March 14, contained 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. The previous version of the bill, which we reported on [here](#), placed a significant financial burden on employers (limited to those with under 500 employees) by requiring them to provide **12 weeks of paid leave** for employees who went on leave for COVID-19 related reasons, including COVID-19 exposure, quarantine, or due to a school closing.

The amended version lessens this burden. It still requires employers covered by the act to provide employees with two weeks of emergency paid sick leave for COVID-19 related reasons; however, only employees who are out due to a school closing would be entitled to the additional 10 weeks of paid leave (at two-thirds salary).

We stress none of this is law yet, and has to be voted on by the Senate.

A more detailed analysis of the new corrections can be found below.

FMLA LEAVE UNDER "TECHNICAL CORRECTIONS" AMENDMENT

Leave: Employees are still entitled to two weeks of fully paid "Emergency Paid Sick Leave," for COVID-19 related reasons. However, an employee is entitled to FMLA paid leave **only** if the employee is unable to work (or telework) because the employee needs to care for a child if the school or place of care has been closed, or the child care provider is unavailable, due to a public emergency.

Comment: The new amendments also appear to potentially grant discretion to employers to exclude certain emergency responders and healthcare workers from both paid sick leave and the additional FMLA paid leave, so as to prevent a shortage of healthcare workers.

Pay: After the two weeks of fully paid sick leave, employees qualifying for the additional FMLA leave will be paid at a rate of no less than two-thirds of the employee's usual pay for an additional 10 weeks, with a cap.

Comment: The corrections also add an explicit clarification that such paid leave cannot exceed \$200 per day and \$10,000 in the aggregate.

What Does This Mean For Employers?

The “technical corrections” to the FFCRA is good news for the under-500 employers who are covered by the law. This amendment takes a more practical, as opposed to a panicked, approach to the coronavirus crisis, and also takes into account the huge financial burden this places on companies, which may be in business distress. Essentially, any employee that is sick, quarantined, seeking diagnosis or caring for an exposed family member or child due to school or day care closure, will be entitled to two weeks of emergency sick pay. However, **only** employees that need to care for a child who cannot be cared for due to a school/day care closure will be entitled to the additional 10 weeks of paid FMLA leave.

The amended bill is expected be heard by the Senate this week.

The COVID-19 situation continues to rapidly change, and so is the proposed legislation to address it. Employers continue to need information in real time, so we are continuing to monitor 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 [Labor and Employment](#) group.