



RE: Congress Finalizes COVID-19 Coronavirus Response Act

Dear friends and colleagues,

This week has proved that the COVID-19 outbreak is slowing and now shutting down many sectors of American economies. On Wednesday evening, President Trump signed the latest coronavirus aid package into law. The Senate approved the second round of emergency funding earlier Wednesday by a vote of 90-8.

Prepare to provide paid sick leave and Family Medical Leave Act (FMLA) provisions. Bill will become effective in 15 days, which means the leave provisions will go into effect on April 2nd.

The economic relief bill is the second aid package in the span of weeks. The legislation passed Wednesday, March 18, 2020 gives paid sick and family leave for some U.S. workers impacted by the illness, expands unemployment assistance, includes nutrition assistance, and increases resources for free drive-thru testing and treatment centers.

This Act includes provisions which apply to employers, for example, paid sick leave for employees impacted by COVID-19 and those serving as caregivers for individuals with COVID-19. Though the Act also contains several provisions to increase funding for familiar benefit programs such as Women Infant and Children (WIC) and Supplemental Nutrition Assistance Program (SNAP), this legal update summarizes key benefit provisions of the Act which affect employers.

Emergency Family and Medical Leave Expansion Act

- **Expanded Coverage and Eligibility.** The current employee threshold for FMLA coverage would change from only covering employers with 50 or more employees to instead covering those employers with fewer than 500 employees. Also, it lowers the eligibility requirement. An employee who has worked for the employer for at least 30 days prior to the designated leave may be eligible. The Act now includes language allowing **to exempt small businesses with fewer than 50 employees of the required leave if it would jeopardize the viability of their business.**
- **Reasons for Emergency Leave.** Any individual employed by the employer for at least 30 days may take up to 12 weeks of job-protected leave to allow an employee, who is unable to telework, to care for the employee's minor child, if the child's school, care facility or childcare provider is unavailable due to a public health emergency. This is now the **only qualifying need** for Emergency FMLA.
- The first 10 days of Emergency FMLA may be unpaid. During the 10-day waiting period, employees may choose to use any accrued paid leave such as paid time off, vacation and sick leave. After the 10-day waiting period, the employer must pay full-time employees **at two-thirds the employee's regular rate** for the number of hours the employee would otherwise be normally scheduled. The Act limits pay entitlement to \$200 per day and \$10,00 in the aggregate per employee.

Emergency Paid Sick Leave Act

The Act allows an eligible employee to take paid sick leave for the following reasons if the employee is:

1. subject to federal, state, or local quarantine or isolation order related to COVID-19;
2. advised by a health care provider to self-quarantine due to COVID-19 concerns;
3. experiencing COVID-19 symptoms and seeking medical diagnosis;
4. caring for an individual subject to a federal, state, or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
5. caring for the employee's child if the child's schools or place of care is closed or the child's care provider is unavailable due to public health emergency;
6. experiencing any other substantially similar condition specified by the Secretary of Health of Human Services in consultation with the Secretary of Treasury and the Secretary of Labor; or
7. caring for another who is subject to isolation order or advised to self-quarantine as described above is no longer limited to just family members.

Eligibility provisions require employers with fewer than 500 employees to provide full-time employees with 80 hours of paid sick leave at the employee's regular rate of pay. Employers may pay two-thirds the employee's regular rate to care for qualifying reasons 4, 5, or 6 listed above.

There is a cap on paid sick leave wages, limited to \$511 per day up to \$5,110 total per employee for their own use and to \$200 per day up to \$2,000 total to care for others and any other substantially similar conditions.

Emergency Unemployment Insurance Stabilization and Access Act of 2020

- Employers will not be "dinged" by any claims that are filed during the COVID-19 outbreak for a defined period set by the government. Expect the time period to be adjusted regularly if the outbreak spikes in your state or region.
- Given that it's mid-month today as we write this and claims are flooding state agencies across the country, it is critical that employees apply immediately for assistance. We want funds available for employees by the first of the month so they can pay their rent and mortgages at the beginning of April.
- Provide a written notice of lay off to each employee as you meet with them. It's critical that exiting employees have this letter to expedite their application process. The letter confirms to the employee and the employment agency determining claim eligibility that the employer is not contesting the claim.
- If you have a company-sponsored medical plan, discuss healthcare continuation at the end of lay off discussion with each employee. COBRA coverage is important more than ever because it not a good time to be without health insurance or to have escalating out of pocket health care expenses costs including unanticipated monthly premiums.
- Retirement Plans. Some employees may elect to borrow against their plan and terms and conditions vary greatly based on your Summary Plan Document and the employee's age. Be available for employees who contact you requesting information.



- Department of Labor resource list by state that shows maximum weekly benefit amount and state unemployment insurance benefits website. <https://www.savingtoinvest.com/maximum-weekly-unemployment-benefits-by-state/>

Tax Credit for Paid Sick and Paid FMLA

Tax credits are allowed against the employer portion of Social Security taxes. Though this limits application of the tax credit, employers will be reimbursed if their costs for qualified sick leave or qualified family leave wages exceed the taxes they would owe.

- Refundable tax credit equal to 100% of the qualified sick leave wages paid by employers for each calendar quarter in adherence with the Emergency Paid Sick Leave Act.
- Employers are entitled to a refundable tax credit equal to 100% of the qualified family leave wages paid by employers for each calendar quarter in alignment with the Emergency Family and Medical Leave Expansion Act.
- Only those employers who are required to offer Emergency Paid Sick Leave and Emergency FMLA may receive these credits.

For Struggling Businesses

- File Tax Extensions. The Department of Revenue Services has extended deadlines for filing payments associated with certain state business tax returns. [IRS Form 8868](#).
- Work-sharing Programs. The programs enable employers considering layoffs to temporarily reduce work hours for a group of employees as an alternative during hard economic times. Affected employees have a portion of their wages supplemented by a percentage of their available unemployment compensation benefits. The programs allow employees to keep their jobs and companies to maintain their workforce. Employers can reduce the hours of full-time employees by as much as 60 percent. Program eligibility requires employers to have two or more full-time or permanent part-time (24 hours per week) employees. Seasonal or temporary employees do not qualify. To qualify, the business reduction of work cannot be less than 10 percent or more than 60 percent. Department of Labor. [Find out if your state offers program and its details here](#).
- Mitigating Impact on Employees. Your business reputation is critical. Protect it. As we climb out of the economic downturn in the future, former employees could have a positive or negative impact on your business even just reputationally. We urge you to soften the blow of any transitional plans due to the pandemic with humanity and empathy coupled with direct communication.

What's Next?

With these emergency acts effective on April 2nd, be sure there will be more emergency Acts or extensions based on the evolving outbreak. Employers will need to adhere to the above leave requirements within 15 days, but such employers will also be required to provide notice to their employees through postings and policies.

Many states are proposing similar emergency legislation to enact or expand their own paid sick leave or FMLA laws to cover COVID-19-related issues. Watch your state laws (paid sick leave, unemployment



requirements, additional tax credits, etc.) because they may be in addition to the new federal requirements.

We know that you are making tough decisions that seem to be getting tougher each day. Remember- how you treat your people during this period, is how they will remember you and your business. Be kind. Be succinct. Do not over promise or over commitment.

HR4VR is committed to monitoring this rapidly changing circumstances and provide updates as appropriate. Make sure you are subscribed to [HR4VR's alert system \(https://hr4vr.com/contact/\)](https://hr4vr.com/contact/) to gather the most current information. For further advice or information on how to satisfy notice requirements and Acts as an employer, contact us.

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