



## Prepare to Provide Paid Sick Leave and FMLA

Last night, President Trump signed the Families First Coronavirus Response Act, which requires businesses with under 500 employees to provide leave to employees missing work because of certain COVID-19 related reasons. There are two provisions going into effect on **April 2, 2020**: an emergency expansion of the Family Medical Leave Act (FMLA) and a new federal paid sick leave law. These provisions will sunset on December 31, 2020.

### Emergency Family and Medical Leave Expansion

- **Employers Covered** – Employers with **fewer than 500 employees** are covered. The Secretary of Labor may exempt small businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business; such exemption has not yet occurred.
- **Limited Employee Eligibility** – Any individual employed by the employer for at least 30 days (before the first day of leave) may take up to **12 weeks of job-protected leave**. This leave is available to an employee, who is unable to work or telework, to care for the employee's child (under 18 years of age) if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency. A previous version of the bill had included additional reasons for leave which were not included in the final version.
- **Paid Leave** – The first 10 days of emergency FMLA may be unpaid. During this 10-day period, an employee may elect to substitute any accrued paid leave (like vacation or sick leave) to cover some or all of the 10-day unpaid period. After the 10-day period, the employer generally 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. This pay entitlement is limited to \$200 per day and \$10,000 in the aggregate per employee.
- **Calculating Pay for Non-Full Time Employees** – Employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking emergency FMLA. Employees who have worked for less than six months prior to leave are entitled to the employee's reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.
- **Job Restoration** – Employers with 25 or more employees will have the same obligation as under traditional FMLA to return any employee who has taken emergency FMLA to the same or equivalent position upon the return to work. Employers with fewer than 25 employees, however, are generally excluded from this requirement if the employee's position no longer exists following the emergency FMLA leave due to an economic downturn or other circumstances caused by a public health emergency. This exclusion

is subject to the employer making reasonable attempts to return the employee to an equivalent position and requires the employer to make efforts to return the employee to work for up to a year following the employee's leave.

### **Emergency Paid Sick Leave**

- **Eligibility** – Employers with **fewer than 500 employees** are required to provide all full-time employees with **80 hours of paid sick leave**, regardless of the employee's duration of employment prior to leave.
- **Reasons for Paid Sick Leave** – An eligible employee may take paid sick leave because the employee is:
  1. **Quarantine** — to comply with a federal, state or local quarantine or isolation order related to COVID-19
  2. **Self-Quarantine** — to self-quarantine, if the employee has been advised to do so by a local healthcare provider
  3. **Diagnosis or Treatment** — to obtain a medical diagnosis or treatment if the employee is experiencing symptoms of COVID-19
  4. **Care for a Quarantined Individual** — to care for an individual required to be quarantined or advised to be quarantined
  5. **Child Care** — to care for an employee's child if the child's school or child care provider has been closed or is unavailable due to COVID-19-related issues
  6. **Substantially Similar Care** — to care for a substantially similar condition, as determined by the secretary of health and human services
- **Amount to be Paid to Employee** – This sick leave must be paid at the employee's regular rate (or at two-thirds of the employee's regular rate for qualifying items 4, 5, and 6 above). Total paid leave is capped at \$511 per day and \$5,110 in the aggregate (per employee) for leave due to items 1, 2 and 3 above. For items 4, 5 and 6 above, total paid leave is capped at \$200 per day and \$2,000 in the aggregate (per employee).
- **Calculating Rate of Pay** – Employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking paid sick leave. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work over a two-week period. A business employing fewer than 500 employees is required, at the request of the employee, to pay a full-time employee for 80 hours of mandated emergency paid sick leave instead of the initial 10 days of unpaid leave permitted by the Emergency Family and Medical Leave Expansion Act (summarized above).

### **Tax Credits for Paid Sick and Paid Family and Medical Leave**

Employers who are required to provide Emergency Paid Family and Medical Leave described above will be eligible for a refundable tax credit. These tax credits are allowed against the employer portion of Social Security taxes. Employers will be reimbursed if their costs for qualified sick leave or qualified family leave wages exceed the taxes they would owe.

**For more information please contact Tony Stergio at 713.850.4214 or via [email](#).**