

President Signs COVID-19 Paid Leave Bill into Law

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On March 18, President Trump signed the Families First Coronavirus Response Act (the “Act”) into law, addressing emergency relief related to coronavirus (COVID-19) and mandating new requirements for certain employers.

Under the Act, private employers with less than 500 employees and all public employers must provide leave under certain circumstances to eligible employees by April 2, 2020. Employers subject to the Act (other than certain government employers) will be entitled to claim a refundable tax credit equal to the amount of paid leave they provide.



Extending FMLA to Provide Paid Family Leave due to COVID-19

The Act first amends the Family and Medical Leave Act (“FMLA”) to provide that employees who have been working for their employer for at least 30 calendar days must be granted 12 weeks of job-protected leave because they are unable to work (or telework) due to a need to care for their child if their child’s school or place of care has been closed due to a COVID-19-related public health emergency.

The first 10 days of this leave may be unpaid. However, eligible employees can choose to use any other accrued leave or paid short-term sick time (defined below) during the initial 10 days. The remaining 10 weeks of the leave must be paid by the employer at the rate of two-thirds of the employee’s regular rate of pay. However, the FMLA benefit is capped at \$200 a day (or \$10,000 total in paid leave benefits), and will expire at the end of the year.

Finally, employers of health care providers and emergency responders may opt out of complying with these amendments to the FMLA.

Short-Term Paid Sick Time

The Act also provides for short-term paid sick time, for a variety of reasons in addition to caring for a child because of a school closing.

What must employers provide?

Employers subject to the Act must provide paid sick time to the extent the employee is unable to work or telework because:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.

The Act also empowers the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor to specify other “substantially similar conditions” that warrant short-term paid sick time under the Act.

How much short-term paid sick time must employers provide?

Full-time employees must be given 80 hours (10 days) of short-term paid sick time. Part-time employees must be paid the average that the employee works over a two-week period. By April 2, 2020, the Secretary of Labor will issue guidance on how to calculate the wages of part-time employees. There is no “days of work” requirement to be eligible for short-term paid sick time. As with the amendments to the FMLA, health care providers and emergency responder employers may opt out of the short-term paid sick time requirements.

For short-term paid sick time that is taken because of a government quarantine order or because the employee is self-quarantining because of COVID-19, employers must pay the employee’s regular wage for the 10 days. However, the Act the limits the amount of payments to \$511 per day and \$5,110 in the aggregate.

And in line with the amendments to the FMLA, if an employee is taking short-term paid sick time to care for an individual affected by COVID-19 or to care for a child affected by a school closure, the paid sick time benefit is capped at \$200 per day and \$2,000 in the aggregate.

Paid sick time does not carry over from one year to the next, and there is no requirement that employers pay out unused sick time when the employee separates from employment. Employers are prohibited from requiring that employees find substitute employees to cover shifts while using paid sick time.

Tax Credit

Employers, other than certain government employers, will be allowed a refundable payroll tax credit equal to 100% of the qualified short-term sick time wages and qualified FMLA leave wages paid under the Act. The amount of the credit is limited to \$511 per day per employee in the case of short-term sick time taken due to a government quarantine order or an employee self-quarantining, and limited to \$200 per day per employee (with an aggregate limit of \$10,000) in the case of qualified FMLA leave and short-term sick time taken to care for others. The aggregate number of days taken into account for purposes of the credit for short-term sick time wages is limited to 10 per employee. The amount of the credit for short-term sick time and FMLA leave wages is increased by the amount of certain health plan expenses allocable to the qualified wages. There is no double tax benefit permitted, so employers must add the amount of the tax credit to their gross income for the applicable tax period. The credit only applies to days during the period selected by the Secretary of the Treasury, which will be during the 15-day period beginning on the date of the Act and ending on December 31, 2020.

Enforcement

Employers who fail to comply with the short-term paid sick time requirements or the amendments to the FMLA may face enforcement actions brought by the Secretary of Labor under the Fair Labor Standards Act and/or the FMLA. Penalties could include payment of unpaid wages, liquidated damages, and equitable relief.

Notice Requirement

By March 25, 2020, the Secretary of Labor will issue a model notice covering the Act's requirements, which employers must post for their employees.

Exemptions

The Act gives the Secretary of Labor authority to exempt small businesses with fewer than 50 employees where the imposition of its requirements would jeopardize the viability of the business as a going concern. It also gives the Secretary of Labor authority to exclude health care providers and emergency responders from its requirements (who are already empowered with the ability to opt out of the Act's requirements). More guidance can be expected in the coming weeks on how to qualify for these exemptions.

This is a rapidly evolving area of the law, so stay tuned for more developments on [Freeborn's COVID-19 webpage](#). If you have questions, please contact the authors of this alert.

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