

## **What is the Families First Coronavirus Response Act?**

The Families First Coronavirus Response Act ("Families First Act") was signed into law by President Trump March 18, 2020 and will be effective April 2, 2020 with an expiration date of December 31, 2020. This Law provides two (2) leaves and applies to employers with fewer than 500 employees.

1. Emergency Family and Medical Leave Expansion Act ("**EFMLA**")
2. Emergency Paid Sick Leave Act ("**EPSLA**").

## **Emergency Family and Medical Leave Expansion Act**

Effective April 2, 2020 employees of employers with fewer than 500 employees can be provided with the right to take up to 12 weeks of public health emergency leave under the Family and Medical Leave Act ("FMLA").

Ten of these twelve weeks are to be paid at a rate of no less than two-thirds of the employee's usual rate of pay. (FMLA leave for all other purposes remains unpaid.) The first two weeks will be paid by Paid Sick Leave above.

To be eligible for paid leave, employees must have been on the employer's payroll for 30 days and may use emergency FMLA leave for the following reasons:

- \* To adhere to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus;
- \* To care for a family member who is adhering to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus; and
- \* To care for a child of an employee if the child's school or place of care has been closed, or the childcare provider is unavailable, due to the coronavirus.

The first two weeks of leave may be unpaid; the employee may choose to substitute accrued paid time off or other medical or sick leave during this period, but an employer cannot require an employee to do so. After the first two weeks of unpaid leave, employers must continue paid FMLA leave at a rate of no less than two-thirds of the employee's usual rate of pay.

As with traditional FMLA leave, this leave is job-protected and an employer must return the employee to the same or equivalent position upon their return to work. This new law outlines an exception for employers with less than 25 employees if the employee's job no longer exists due to the coronavirus pandemic, which requires employers to make reasonable efforts to restore the employee to an equivalent position over a one-year period.

The Secretary of Labor has the authority to issue regulations exempting: (1) certain health care providers and emergency responders from taking leave under the bill; and (2) small business with fewer than 50 employees from the requirements of the bill if it would jeopardize the viability of the business. **\*However, until such regulation is actually enacted, there is no exemption and employers should consult with an attorney if they are unsure if they need to comply.**

## **Paid Sick Leave**

Effective April 2, 2020 employers with fewer than 500 employees will be required to provide full-time employees with 2 weeks (80 hours) of paid sick leave for the following reasons:

- \* To self-isolate because of a diagnosis of COVID-19, or to comply with a recommendation or order to quarantine due to exposure or exhibition of symptoms;
- \* To obtain a medical diagnosis or care if the employee is experiencing symptoms of the coronavirus;
- \* To care for a family member who is self-isolating due to a diagnosis of coronavirus, experiencing symptoms of coronavirus and needs to obtain medical diagnosis or care, or quarantining due to exposure or exhibition of symptoms; or
- \* To care for a child whose school has closed, or childcare provider is unavailable, due to the coronavirus.

Employers must compensate employees for any paid sick time they take at their regular rates of pay (unless the leave is being used to care for a family member or child, in which case the employee is only entitled to two-thirds of his or her regular rate of pay). The sick leave is available for immediate use by employees, regardless of length of employment.

Additionally, 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.

Employers who already provide paid leave to employees on the day before the law is enacted must provide this paid leave in addition to any paid leave already provided-and may not change their paid leave policies on or after the date of enactment to avoid compliance. Finally, employers cannot require employees to utilize other paid leave before using the paid leave provided by this bill.

## **I heard there were tax credit for employers.**

A series of refundable tax credits are for employers providing paid emergency sick leave or paid FMLA. The credits are as follows:

- A refundable tax credit for employers equal to 100% of qualified family leave wages required to be paid that are paid by an employer for each calendar quarter. The tax credit is allowed against the tax imposed the employer portion of Social Security taxes. The amount of qualified family leave wages taken into account for each employee is capped at \$200 per day and \$10,000 for all calendar quarters. If the credit exceeds the employer's total liability for Social Security taxes for all employees for any calendar quarter, the excess credit is refundable to the employer.
- A refundable tax credit for employers equal to 100 % of qualified paid sick leave wages that are paid by an employer for each calendar quarter. The tax credit is allowed against the tax imposed by the employer portion of Social Security taxes (6.2% of wages).

Prepared by:  
Larry Grudzien  
Attorney-At-Law  
(708) 717-9638  
[larry@larrygrudzien.com](mailto:larry@larrygrudzien.com)