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The *Families First Coronavirus Response Act* was signed by President Trump on March 19, 2020. The new law affects employers by requiring paid sick leave (under certain circumstances) and by temporarily expanding the Family Medical Leave Act. The following is a summary of the new law and we strongly encourage you to contact legal counsel for more specific interpretation. The full version of the law may be found by clicking [HERE](#) or by copying and pasting the following link into your web browser: <https://www.congress.gov/bill/116th-congress/house-bill/6201>. **Note:** several links are provided at the end of this publication that provide businesses and employees with additional guidance and explanation.

I. Paid Sick Leave

Brief Overview: Employers who employ fewer than 500 employees must provide paid leave to employees for a variety of COVID-19 related circumstances, which may overlap with the expanded FMLA coverage as summarized in Part II below.

Small Business Exemptions: Employers with less than 50 employees may be exempt if complying with the Act would “jeopardize the viability of the business as a going concern.” To potentially qualify for the exemption, the business must have an authorized officer determine and document that granting the leave would: a) cause expenses and financial obligations to exceed available revenue; b) pose a substantial risk to the business’s financial health, or c) prevent the business from operating at minimum capacity. Importantly, the exemption from the Paid Sick Leave Act only applies for leave due to childcare. (Note: The exemption for the amendments to the FMLA does not include the childcare limitation.)

The United States Department of Labor has no exemption submission/request process in place for businesses. Businesses seeking the exemption should consult with legal counsel and, at minimum must carefully document reasons justifying the need for the exemption.

Effective Dates: Beginning on April 1, 2020, and ending on December 31, 2020.

Covered Employers: Employers engaged in commerce, or any industry affecting commerce, that employ fewer than 500 employees. Additionally, public agencies that

employ 1 or more employees are covered. Notably, there may be exceptions for employers of **health care providers** and **emergency responders**.

Covered Employees: Employees who are “unable to work (or telework) due to a need for leave” under the following circumstances:

- (1) The employee is subject to a quarantine or isolation order related to COVID-19.
- (2) The employee has been advised to self-quarantine by a health care provider due to concerns about 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 quarantine or isolation order related to COVID-19.
- (5) The employee is caring for a son or daughter if the school or place of care has been closed, or the childcare provider is unavailable, due to COVID-19 precautions.
- (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Amount of Available Paid Sick Leave: Full-time employees are entitled to 80 hours of paid sick leave. Part-time employees are entitled to “a number of hours equal to the number of hours that each such employee work, on average, over a 2-week period.” The paid sick leave shall be immediately available to covered employees, **upon the effective date of the law**, regardless of the length of time the employee has been employed. The paid sick time will “cease beginning with the employee’s next scheduled work-shift immediately following the termination of the need for paid sick time.”

Calculating Paid Sick Leave: Use the number of hours the employee would otherwise be normally scheduled to work. Paid sick time shall not be less than the greater of: (1) the employee’s regular rate of pay; (2) minimum wage under the Fair Standards Labor Act (“FLSA”); (3) minimum wage under the state or local law where the employee is employed, whichever is greater.

The paid sick time is subject to the following maximum amounts:

1. \$511 per day and \$5,110 total for employees on leave for the following circumstances:
 - a. subject to a quarantine or isolation order related to COVID-19.

- b. has been advised to self-quarantine by a health care provider due to concerns about COVID-19.
 - c. experiencing symptoms of COVID-19 and seeking a medical diagnosis.
2. \$200 per day and \$2,000 total for employees on leave for the following circumstances:
- a. caring for an individual who is subject to quarantine or isolation order related to COVID-19.
 - b. caring for a son or daughter if the school or place of care has been closed, or the childcare provider is unavailable, due to COVID-19 precautions.
 - c. experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Special Rules apply to leave for care of family members. If the employee is taking paid sick leave for: **(a)** caring for an individual who is subject to a quarantine or isolation order related to COVID-19; **(b)** caring for a son or daughter if the school or place of care has been closed, or the child care provider is unavailable, due to COVID-19 precautions; or **(c)** is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor; then the employee shall be entitled to two-thirds of whichever is greater: (1) the employee's regular rate of pay; (2) minimum wage under the Fair Standards Labor Act ("FLSA"); (3) minimum wage under the state or local law where the employee is employed, whichever is greater.

Special rules apply to the calculation of paid sick leave for part time employees whose schedules vary from week-to-week. The employer should take the average number of hours the employee was scheduled per day over the preceding 6-month period, ending on the date on which the employee takes the paid sick time, including hours for which the employee took leave of any type. If the employee did not work in the past 6 months, the employer should calculate the reasonable expectation (as of the date of hire) of the average number of hours per day that the employee would normally be scheduled to work.

Employees CANNOT carryover unused, paid sick time granted under this law.

Employer Notice Provisions: The employer must post notice of the law in conspicuous places on the employer's premises. The Secretary of Labor has been directed to create the notice employers will need to post. The notice can be found [HERE](#).

Employee Notice of Leave: After the first day of taking leave under this law, employees are required to "follow reasonable notice procedures" to continue to receive paid sick time.

General Prohibitions and Penalties: The employer is prohibited from requiring the employee to use other paid leave (i.e. PTO) provided by the employer prior to the employee's use of paid sick time. Employers may not discharge, discipline or otherwise discriminate against an employee who takes leave pursuant to this Act and has filed any complaint or instituted or caused to institute any proceeding related to this Act.

Penalties for violating the Act include the same as failing to pay minimum wage and unlawfully terminating the employee under the FLSA.

Effect on Current Company Policies and Collective Bargaining Agreements: The Act shall not diminish the rights or benefits that an employee already has under Federal, State, or Local law; a collective bargaining agreement, or existing employer policy. It also does not require the employer to compensate the employee for paid sick time upon an employee's separation from employment.

Payroll Tax Credit: Employers get a payroll tax credit to cover the amount paid under the Act equal to the qualified sick leave wages paid. The IRS has issued guidelines for how the credit works [HERE](#).

II. Emergency Family and Medical Leave Expansion Act

Note: The following are temporary amendments to the Family Medical Leave Act and should be read in conjunction with it.

Brief Overview: Employers who employ less than 500 employees are required to provide paid family leave for certain child specific COVID-19 circumstances.

Small Business Exemptions: Employers with less than 50 employees may be exempt if complying with the Act would "jeopardize the viability of the business as a going concern." To potentially qualify for the exemption, the business must have an authorized officer determine and document that granting the leave would: a) cause expenses and financial obligations to exceed available revenue; b) pose a substantial risk to the business's financial health, or c) prevent the business from operating at minimum capacity. (Note: The exemption for the amendments to the FMLA does not include the childcare limitation applicable to the Paid Leave Act.)

There is no exemption submission/request process in place for businesses to qualify for the exemption. Businesses seeking the exemption should consult with legal counsel and, at minimum must carefully document reasons justifying the need for the exemption.

Effective Dates: April 1, 2020, through December 31, 2020.

Covered Employers: Employers who employ fewer than 500 employees for each working day during each of 20 or more calendar work weeks in the current or preceding year. Note: This expands FMLA coverage for employees with COVID-related qualifying needs **to employers with less than 50 employees.**

Eligible Employees: Employees that have been employed for at least 30 days qualify for the amendments to FMLA. Note: This expands coverage to additional employees who are not normally eligible for FMLA, but only for COVID-related qualifying needs.

Qualifying Need: The “qualifying need” for leave is very specific under the amendments. The amendments apply to employees who have a “qualifying need for leave” related to a public emergency with respect to COVID-19 as declared by a federal, state, or local authority. The qualifying need is specifically defined as an employee’s inability to work or, notably, *unable to telework*, due to a need to care for a child under 18 years of age if the child’s school or place of care has been closed due to COVID-19.

Unpaid Leave: The first ten days of FMLA leave will be unpaid. An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for this initial 10-day period.

Paid Leave: After the initial 10-day unpaid FMLA leave, the employer must provide paid leave for each day after the initial 10 days, for the remainder of the employee’s FMLA, of two-thirds of the employee’s regular rate of pay. (See Calculation of Paid Leave section for further details).

Duration of Leave: The amendments do not change the duration of leave available to eligible employees. It remains at 12 weeks of leave total.

Calculation of Paid Leave: The employer must pay an employee no less than two-thirds of the employee’s regular rate of pay based on the number of hours the employee would otherwise be normally scheduled to work. The paid leave shall be capped at \$200 per day and no more than \$10,000 total. If the employee’s schedule varies from week-to-week “such that an employer is unable to determine with

certainty the number of hours the employee would have worked” if not taking leave, the employer shall use a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type. If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

Employee Notice: If the leave is foreseeable, the employee must provide the employer with notice “as is practicable.”

Restoration of Position: An employer is generally required to restore an employee to the same or equivalent position upon coming back from leave. However, an employer with under 25 employees may be excused from the requirement (to restore an employee to the same position) if 1) the employee’s position no longer exists as a result of economic conditions or changes in the operating conditions of the employer, 2) the employer makes reasonable efforts to place the employee in an equivalent position, and 3) the employer makes reasonable efforts to contact the employee within a one-year term if an equivalent position becomes available.

Health Care Workers: An employer of a health care provider or an emergency responder may be exempt from these amendments.

Enforcement: The amendments do not modify the penalties for a violation of the FMLA. Specifically, an employer may be liable to an affected employee any wages lost by the employee as a result of the violation, plus interest, attorney’s fees, and court costs. If the employer did not act in good faith, then the employer may be subject to an additional penalty doubling the employee’s lost wages.

III. Helpful Resources

Wage and Hour Division Coronavirus Homepage - [LINK](#) (Note: This webpage provides a comprehensive index of relevant documents, FAQ’s, fact sheets, required notice posters, assistance bulletins, and educational webinars)

United States Department of Labor Coronavirus Homepage - [LINK](#)

OSHA Coronavirus Homepage - [LINK](#)

EEOC Coronavirus Homepage - [LINK](#)

**While this communication addresses legal issues, it is not intended as legal advice, does not constitute an attorney-client relationship, or substitute for the particularized advice of one's legal counsel.*