
The Families First Coronavirus Response Act: FMLA Expansions and Paid Sick Leave Extensions

By Molly DiBianca / Mar 19, 2020

The Families First Coronavirus Response Act ([H.R. 6201](#)) (the “Act”) was passed by the Senate and signed by the President on Wednesday, March 18, 2020. The Act significantly expands the Family Medical Leave Act (“FMLA”) and requires employers to give paid emergency sick leave related to COVID-19. The Act will take effect within the next two weeks (the Act says no later than 15 days from when it was signed).

Emergency Family and Medical Leave Expansion Act

The Emergency Family and Medical Leave Expansion Act expands FMLA coverage in certain instances resulting from COVID-19.

Who Is Covered

Employers with fewer than 500 employees are covered although the Secretary of Labor has the authority to exempt small businesses of fewer than 50 employees where the new requirements “would jeopardize the viability of the business as a going concern.” Although large employers with more than 500 employees are not covered by the Act, many have elected to award some paid leave. Because it is unknown whether there will be any exemptions for small employers, all employers with fewer than 500 employees should be prepared to comply.

All employees who have been employed for at least 30 days are covered by the Act but health-care providers and emergency responders may be exempted (determination of this fact must await the DOL’s regulations).

What Is Required

Eligible employees must be given up to 12 weeks of leave – the first 10 days unpaid but the remainder paid – when the employee is unable to work (or telework) in order to care for the employee’s minor child whose school or daycare is closed or whose child-care provider is unavailable due to COVID-19.

Although the first 10 days of leave are unpaid under the Act, the employee may elect to substitute accrued paid leave for the unpaid days. The duration of the leave is paid at two-thirds the employee’s regular rate of pay for up to \$200 per day or \$10,000 in the aggregate.

Emergency Paid Sick Leave Act

Who Is Covered

Private-sector employers with fewer than 500 employees and all public-sector employers are covered. Health-care providers and emergency responders may be exempted.

What Is Required

Eligible full-time employees may take up to 80 hours of paid leave for a qualified reason. Full-time employees receive the average number of hours they normally work in a two-week period. Part time employees may take the number of hours that they work over a two-week period. The paid leave is available for immediate use.

Employers must post a notice, a model of which will be published by the Secretary of Labor within 7 days of the law’s enactment.

As with other employment laws, the Act prohibits retaliation based on an employee’s request for leave or participation in a complaint about a violation of the Act.

Reasons for Leave

There are six (6) reasons for emergency paid sick leave under the Act:

1. The employee is subject to a legal quarantine or isolation order;
2. The employee has been advised by a health-care provider to self-quarantine;
3. The employee is symptomatic and seeking a diagnosis;
4. The employee is caring for a person who is subject to a legal quarantine or isolation order or who has been advised by a health-care provider to self-quarantine (as described in Reasons 1 and 2);
5. The employee is caring for a son or daughter whose school, day care is closed or child-care provider is unavailable due to COVID-19 precautions;
or
6. “The employee is experiencing any other substantially similar condition specified by the Secretary of HHS”

Rate of Leave Pay

Employees taking leave for their own sickness (Reasons 1-3) are paid at the employee's regular hourly rate, up to \$511 per day (\$5,110 in the aggregate).

Employees caring for a family member (Reasons 4-5) receive two-thirds of their regular hourly rate. Employees caring for a family member (Reasons 4-5) and employees experiencing a "substantially similar condition" as described in Reason 6 are capped at \$200 per day (\$2,000 in the aggregate). Although employers must bear the cost of the initial expense of the new paid leave requirements, the Act does provide for a payroll tax credit.

Employer Next Steps

The Act creates significant new financial and administrative obligations for employers. Because the Act will not require employers to provide paid time off to employees who were laid off prior to the Act taking effect, many employers are faced with a difficult but urgent decision with regard to staffing. Until regulations are issued by the Department of Labor, employers should be prepared to comply with the law as written.

The attorneys in Clark Hill's Labor & Employment Practice Group are available to assist in navigating these uncharted waters. For more information, please visit Clark Hill's [COVID-19 Resources](#) webpage.