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Frequently Asked Questions About the Paid Leave Provisions of the Families First Coronavirus Response Act

On March 18, 2020, Congress enacted the Families First Coronavirus Response Act (FFCRA) as an emergency response to the coronavirus (COVID-19) pandemic. Among other things, the FFCRA includes two paid leave provisions for employees who need to take time off work for reasons related to COVID-19:

- The Emergency Paid Sick Leave Act
- The Emergency Family and Medical Leave Expansion Act

The following information is intended to answer some of the most frequently asked questions that have arisen with respect to these paid leave provisions.

NOTE: TO THE EXTENT THAT THE STIMULUS ACT (which is expected to be signed into law on March 27, 2020) MODIFIES OR CLARIFIES ANY OF THE ISSUES ADDRESSED IN THIS ALERT, WE WILL PROVIDE A TIMELY UPDATE.

Emergency Paid Sick Leave Act

1. When is the law effective?

The law goes into effect April 1, 2020 and will expire on Dec. 31, 2020.

2. What employers are covered by the law?

The law covers private employers with fewer than 500 employees and all government employers.

3. Are there any exemptions or exclusions for covered employers?

There are currently no regulations exempting any covered employers. However, the Secretary of Labor is authorized to issue regulations that exempt businesses with fewer than 50 employees from the paid sick leave requirements relating to childcare leave only (as described in item 4 below), if providing such leave would jeopardize the viability of the business as a going concern. This prospective “under 50 employees” exemption would not apply to sick leave for any other COVID-19-related reason.

In addition, an employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from taking paid sick leave under the law.

4. Under what circumstances can an employee utilize the emergency paid sick leave?

An employee is entitled to paid sick leave if the employee is unable to work or telework for any of the following reasons:

Group A

- The employee is under a federal, state, or local quarantine or isolation order related to COVID-19.
- The employee has been advised by a health care provider to self-quarantine because of COVID-19 concerns.
- The employee is experiencing COVID-19 symptoms and seeking a medical diagnosis.

Group B

- The employee is caring for an individual subject to a quarantine or isolation order or advised to self-quarantine because of COVID-19 concerns.
- The employee is caring for a son or daughter (as defined in the FMLA) where, due to COVID-19 precautions, the child's school or place of care has been closed or the childcare provider is unavailable.
- 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.

5. How much emergency paid leave is provided by the law?

In addition to any paid sick leave already provided by the employer, covered full-time employees are entitled to 80 hours of paid leave. Part-time employees are entitled the average number of hours the employee working during a two-week period.

Leave is paid depending on the reason for the employee's absence:

- For Group A reasons (as described in item 4 above), full-time employees receive their full regular rate of pay, capped at \$511 per day (or \$5,110 total).
- For Group B reasons (as described in item 4 above), full-time employees receive 2/3 of their regular rate of pay, capped at \$200 per day (or \$2,000 total).

6. Can an employer require an employee to use other available paid time off before utilizing the emergency paid sick leave?

No, employers cannot require an employee to use other available paid or unpaid leave before allowing the employee to use paid leave under the law.



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7. Is a tax credit available to pay for the sick leave required by the law?

Yes, private employers can claim refundable paid sick leave credits as an immediate dollar-for-dollar offset against certain payroll taxes due (and therefore retain such payroll taxes) or as a refund based on qualifying leave they provide between the effective date of the Act and Dec. 31, 2020.

Emergency Family and Medical Leave Expansion Act

1. When is the law effective?

The law goes into effect April 1, 2020 and will expire on Dec. 31, 2020.

2. What employers are covered by the law?

The law covers private employers with less than 500 employees and all government employers.

3. Are there any exemptions or exclusions for covered employers?

There are currently no regulations exempting any covered employers. However, the Secretary of Labor is authorized to issue regulations that exempt businesses with fewer than 50 employees from the paid sick leave requirements if providing such leave would jeopardize the viability of the business as a going concern.

In addition, an employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from taking paid sick leave under the law.

4. Under what circumstances can an employee utilize the Emergency FMLA leave?

An employee who has been employed by the employer for at least 30 days is entitled to expanded FMLA leave if the employee cannot work or telework due to the need to

care for a son or daughter under 18 years of age if, due to a public health emergency, the child’s school or place of care has been closed or the child’s care provider is unavailable.

5. What does Emergency FMLA leave entail?

Emergency FMLA provides eligible employees with 12 weeks of leave.

The first two weeks of leave is unpaid, although an employee may elect to substitute accrued paid leave during that time, including the paid leave provided by the Emergency Paid Sick Leave Act.

The remaining 10 weeks of leave is paid at a rate of at least 2/3 of the employee’s regular rate of pay based on the employee’s regular schedule, capped at \$200 per day (or \$10,000 total).

6. Does Emergency FMLA provide for job restoration?

Yes. As with FMLA in general, employees returning from Emergency FMLA have the right to return to the same or an equivalent position.

However, an employer with less than 25 employees is not required to restore an employee to the same or equivalent position if the employer meets all of the following criteria:

- The employee’s position no longer exists because of economic or other operating conditions affecting employment and caused by a public health emergency;
- The employer makes reasonable efforts to return the employee to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment; and
- If unable to return the employee to an equivalent position, the employer makes reasonable efforts to contact the employee about available equivalent positions for one year beginning on the earlier of: (i) the end of the employee’s qualifying need; or (ii) 12 weeks after the employee’s leave began.

7. Is a tax credit available to pay for the sick leave required by the law?

Yes, private employers can claim refundable Emergency FMLA tax credits as an immediate dollar-for-dollar offset against certain payroll taxes due (and therefore retain such payroll taxes) or as a refund based on qualifying leave they provide between the effective date of the Act and Dec. 31, 2020. exemptions. Be sure to consult applicable state laws to ensure compliance.

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