

## THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT EFFECTIVE APRIL 2, 2020

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The Act is now final. We summarize the key provisions of the Act as it directly impacts employers.

IT IS IMPORTANT to understand that The Families First Coronavirus Response Act is a collection of acts. Two of these acts are of primary concern for employers. The two acts, while inter-related to some degree, stand alone and place different obligations on employers.

### A. EMERGENCY PAID SICK LEAVE ACT

**Employers that are likely the first to face the provisions of the Emergency Paid Sick Leave Act.**

#### 1. COVERAGE:

- a. Employers with 500 *or fewer* employees.
- b. An employee is eligible for Emergency Paid Sick Leave *on the first day of employment*. (An employer may elect to exclude healthcare providers and emergency responders).
- c. Full-time and part-time employees are covered.

#### 2. QUALIFYING EVENTS:

- a. The employee is under a Federal, State or local quarantine or isolation order;
- b. The employee has been advised by health care provider to self-isolate because the employee has been diagnosed with coronavirus;
- c. The employee is experiencing the symptoms of coronavirus and needs to obtain medical diagnosis or care.
- d. The employee is caring for *an individual* (not limited to family members) who a public official has ordered, or a health care provider has advised, to self-quarantine

e. To care for a son or daughter whose school or place of care has closed, or the childcare provider of such son or daughter is unavailable due to coronavirus precautions.

f. The employee is experiencing any substantially similar condition specified by Secretary of Health and Human Services.

### 3. PAY:

a) Amount of hours of paid leave available

Full-time employees: 80 hours of pay

Part-time employees: The hours the employee works, on average, for the 6 month period prior to the qualifying event, if employed less than six months, the average hours the employee would normally be scheduled to work over a 2 week period.

#### ***b) THE HOURLY RATE OF PAY IS BASED ON THE QUALIFYING EVENT***

The first three qualifying events:

"a. The employee is under a Federal, State or local quarantine or isolation order;

b. The employee has been advised by health care provider to self-isolate because the employee has been diagnosed with coronavirus;

c. The employee is experiencing the symptoms of coronavirus and needs to obtain medical diagnosis or care."

Pay : Full regular rate of pay, ***CAPPED at \$511 per day, and \$5,110 in the aggregate.***

The second three qualifying events:

"d. The employee is caring for *an individual* (not limited to family members) who a public official has ordered, or a health care provider has advised, to self-quarantine

e. To care for a son or daughter whose school or place of care has closed, or the childcare provider of such son or daughter is unavailable due to coronavirus precautions.

f. The employee is experiencing any substantially similar condition specified by Secretary of Health and Human Services."

Pay: Two-thirds of regular rate of pay, **CAPPED at \$200 per day, and \$2,000 in the aggregate.**

Emergency Paid Sick Leave is ***in addition*** to an employer's existing paid leave policies and employers ***may not*** charge time off under the Emergency Paid Leave Act against other accrued leave, or change existing policies to avoid or reduce the financial impact of. The Emergency Paid Sick Leave.

## **B. EMERGENCY FAMILY MEDICAL LEAVE EXPANSION ACT**

The second Act is the "Emergency Family Medical Leave Expansion Act," which temporarily expands the coverage of the Family Medical Leave Act.

The Act adds a "Public Health Emergency" as a qualifying event. As written, the Emergency Family Medical Leave Expansion Act ***should not*** require an employer to grant an employee two 12-week periods of Family Medical Leave. For example, an employee should not be eligible for 12 weeks of FMLA leave for the birth of a child and an additional 12 weeks for a Public Health Emergency Leave.

### **1. COVERAGE:**

a. Employers with 500 *or fewer* employees.

**\*\* Employers with 49 or fewer employees may seek an exemption if the leave requirement would jeopardize the viability of the business. The Department of Labor is charged with implementing regulations for employers to apply for this exemption, but the regulations are not yet in place.**

b. An employee is eligible for Emergency Paid Sick Leave after 30 days of employment, without regard to the number of hours worked during that that period.

c. Full-time and part-time employees are covered.

### **2. QUALIFYING EVENT:**

**There is only one qualifying event:**

**"The employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency."**

### **3. AMOUNT OF PUBLIC HEALTH EMERGENCY LEAVE:**

The Act provides that an employee is eligible for up to 12 weeks of Public Health Emergency Leave.

#### **4. PAY:**

The first 10 days of leave may be unpaid.

An employee may elect to use Emergency Paid Leave or accrued paid time off under an employer's existing leave policies.

The employer cannot require the employee to use accrued paid time off under an employer's existing leave policies

For any required leave beyond those 10 days, 2/3 of the employee's regular rate of pay for the number of hours the employee would normally be scheduled to work **CAPPED** at **\$200 per day and \$10,000 in the aggregate.**

#### **5. JOB RESTORATION:**

An employer is required to restore an employee to the same or an equivalent position on the completion of Public Health Emergency leave.

An employer with fewer than 25 employees is relieved from the requirement to reinstate employees after a Public Health Emergency Leave:

1. If the position no longer exists due to economic conditions or other changes in the operating conditions of the employer; and
2. The employer makes reasonable efforts to restore the employee to an equivalent position with equivalent benefits, pay and other terms of employment.

The EFMLA is effective from the date of enactment through December 31, 2020.

**It is important to remember that the provisions specific to a Public Health Emergency Leave *DO NOT* apply generally to the other qualifying events under of the Family Medical Leave Act.**

#### **C. TAX CREDITS:**

Employers will be allowed a refundable tax credit against the employer portion of Social Security taxes. The credit equals 100% of the wages paid under Emergency Paid Leaves AND Public Health Emergency Leaves combined for each calendar quarter. Employers also will be reimbursed for amounts paid that exceed the amount of Social Security taxes the employer would owe.

If you are a small and mid-size business owner and have questions, please contact Labor & Employment Partner [David B. Walston](#) at 205.250.6636 or [dbwalston@csattorneys.com](mailto:dbwalston@csattorneys.com)

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