

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (ACT): WHAT DOES IT MEAN FOR EMPLOYERS?

The information provided does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available are for general informational purposes only.

The Act was signed into law on March 18, 2020 and takes effect April 1, 2020. This Act is in response to the COVID-19 outbreak. The information provided below summarizes some of the key provisions impacting employers.

EMERGENCY FAMILY AND MEDICAL LEAVE (FMLA) EXPANSION ACT (SECTION 3102)

- Employees of employers with fewer than 500 employees, who have been on the job for at least 30 days, have a right to take job-protected leave under FMLA for up to 12 weeks if they meet the following condition:
 - They are caring for a child (under the age of 18) if the school or place of care for the child has been closed, or the childcare provider of the child is unavailable, due to COVID-19 precautions.
- The first 10 days of leave may be unpaid, though an employee could choose to use accrued vacation days, personal leave, or other available paid leave for unpaid time off. Following the 10-day period, employees would receive a benefit from their employers that will be at least two-thirds of their normal pay rate.
- The family leave pay is capped at \$200 per day and \$10,000 in total.
- Employers of health care providers or emergency responders may elect out of providing paid family leave to these employees.
- Employers generally need to restore an employee to the position held or its equivalent when the employee returns from leave; however, an exception exists for employers with fewer than 25 employees if certain conditions are met.
- The U.S. Department of Labor has authority to exempt from the paid family leave requirement employers with fewer than 50 employees if the requirement to provide leave would jeopardize the viability of the business.

EMERGENCY PAID SICK LEAVE ACT (SECTION 5102)

- Employers with fewer than 500 employees must provide employees with two weeks of paid sick leave that is:
 - Paid at the employee's regular rate if (in connection with COVID-19) the employee:
 - is subject to a quarantine or isolation order;
 - has been advised to self-quarantine;
 - is experiencing symptoms; or,
 - Paid at two-thirds the employee's regular rate if (in connection with COVID-19) the employee:
 - is on leave to care for an individual who is subject to an isolation order or who is a quarantined employee; or
 - is on leave to care for a child (under the age of 18) if the school or place of care for the child has been closed or the childcare provider of the child is unavailable, due to COVID-19 precautions.
 - Full-time employees can receive up to 80 hours of sick leave, while part-time employees are eligible for leave based on their scheduled or normal work hours in a two-week period.
 - Paid sick leave is calculated based on the employee's regular compensation but is capped at \$511 per day for employees who fall into the first three categories above and at \$200 per day for those in the two care-related categories.

- Employers of health care providers or emergency responders may elect out of providing paid family leave to these employees.
- Paid sick time does not carry over from one year to the next.
- Employers cannot require employees to find a replacement to cover the hours during which the employee is using paid sick time.
- The U.S. Department of Labor has broad authority under this Act to exempt from the paid family leave requirement employers with fewer than 50 employees if the requirement to provide leave would jeopardize the viability of the business.
- Employers that already have existing paid leave policies must also provide employees with this emergency paid sick time and cannot require employee use other paid leave provided before using this paid sick leave.
- Employers are required to provide notice, a model of which will be provided by the U.S. Department of Labor.
- Employers may not discharge, discipline or in any other manner discriminate against an employee who takes leave under the Act or who has filed a complaint or instituted any proceedings under or related to the Act, or who has testified or is about to testify in any proceedings under or related to the Act.
- An employer could be subject to civil penalties for a violation of paid sick leave requirements.

The U.S. Department of Labor has indicated it will be providing further guidance on how employers can comply with the Act. We will be updating this page with additional resources as information becomes available.