

Pending Legislation for Emergency Paid Sick Leave - A Summary of the Families First Coronavirus Response Act

In response to the ongoing Coronavirus pandemic, the United States House of Representatives passed the Families First Coronavirus Response Act (“FFCRA”) early Saturday morning. Among its various provisions, the legislation includes the Emergency Paid Sick Leave Act and the Emergency Family Medical Leave Expansion Act, both of which provide for paid, job protected leave for Coronavirus-related absences. Notably, these provisions apply only to employers with fewer than 500 employees. Employers’ obligations would become effective 15 days from enactment and would automatically expire on December 31, 2020. Although President Trump is expected to sign some variant of the FFCRA into law, the legislation is still subject to tweaks by the House and Senate in the coming days. Nevertheless, we expect a version of the bill to become law very soon, perhaps as soon as Monday or Tuesday. Regulations will then follow.

While we explain several important provisions below, the gist is that employees who work for employers with fewer than 500 employees are entitled to fully paid leave for the first 14 days of a Coronavirus qualifying reason, and 2/3 pay for the remainder of the leave, up to 12 weeks.

Currently, the FFCRA’s provisions include the following:

Emergency Paid Sick Leave Act

This provision requires employers with fewer than 500 employees to provide full-time employees (regardless of how long the employee had been employed prior to the leave) with 80 hours of paid sick leave. These leave benefits are available only to employees who are absent from work for reasons related to Coronavirus. Specifically, to qualify for the paid-leave benefits under this Act, an employee’s leave must be for one of the following purposes:

1. Self-isolation due to a Coronavirus diagnosis;
2. To obtain a diagnosis or medical care following Coronavirus symptoms;
3. To comply with the recommendation of a public official or health care provider if the employee’s physical presence would jeopardize the health of others due to Coronavirus or symptoms thereof;
4. To care for a family member to whom any of the above conditions apply; or
5. To care for a child if the child’s school or child care provider is closed or unavailable due to Coronavirus.

Part-time employees receive only the number of hours they have worked over an average two-week period. During this leave, employers must pay employees at their regular rate of pay. However, employees are entitled to receive only two-thirds of their regular rate of pay when they use this emergency leave for: (4) to care for a family member, or (5) to care for a child whose school or childcare provider is closed or unavailable due to Coronavirus, listed above.

For purposes of the Emergency Paid Sick Leave Act, a “family member” includes an employee’s child, parent, spouse, or domestic partner. The term “family member” also includes an employee’s sibling, next of kin, an individual for whom the employee is next of kin, grandparent, or grandchild but only if they are pregnant, a senior citizen, or an individual with a disability or who has access or functional needs.

Significantly, employers must provide these benefits in addition to any existing paid leave benefits. In other words, employees are entitled to exhaust all available emergency paid leave provided by this Act before they are required to use any otherwise available leave benefits their employer may offer

Emergency Family Medical Leave Expansion Act

This provision is a temporary but significant expansion of the Family Medical Leave Act (“FMLA”) to provide for leave needed for Coronavirus-related reasons. It covers all employers with fewer than 500 employees, not just employers of 50 or more employees. It also covers and lowers the eligibility requirement to employees who have worked for only 30 days (or more).

This Emergency FMLA leave is available to eligible employees for any of the following purposes:

1. To comply with the recommendation/order of a public official or health care provider if the employee’s physical presence at work would jeopardize the health of others due to Coronavirus or symptoms thereof, and the employee is unable to both (a) perform job his/her functions, and (b) comply with the recommendation or order;
2. To care for a family member if a public official or health care provider determined that the family member’s presence in the community would jeopardize the health of others due to Coronavirus or symptoms thereof; or
3. To care for the employee’s child if the child’s school or childcare provider has been closed or is unavailable due to the Coronavirus public health emergency.

The FMLA expansion provides for 12 weeks of job-protected leave. Employers may provide the first 14 days of this leave without pay. While employees can elect to substitute or use otherwise accrued paid leave during these initial 14 days, employers may not require employees to do so, no matter how their policies may read. Presumably, employees could elect to use their 80 hours of emergency paid sick leave provided by the Emergency Paid Sick Leave Act above for this time to be paid. After this initial 14-day period, employers must provide additional paid leave to their employees for the remaining 10 weeks, but only at two-thirds of the employee’s regular rate of pay for the number of hours the employee would normally be scheduled to work.

The FMLA expansion defines a “family member” as a spouse, parent, or child who is under 18 years old. The term also includes a child older than 18 years old, next of kin of the employee, person for whom the employee is next of kin, grandparent, or grandchild if such individual is pregnant, a senior citizen, or has a disability or who has access or functional needs. The Act also broadens the definition of “parent” to include parent-in-law of the employee, a parent of a domestic partner of the employee, and a legal guardian or other person who served as the employee’s parent when the employee was a child.

Employer Tax Credits

The FFCRA also provides for a refundable tax credit to employers for 100% of the qualified sick leave wages paid to their employees (described above). These tax credits would be provided on a quarterly basis and are allowed against the employer's Social Security taxes.

Please reach out to your contacts in the Firm's Labor & Employment Practice if you have any questions or comments about your employee leave provisions and obligations in light of these legislative proposals.