

PRACTICAL NEWS COVID-19 News Source

April 1, 2020



The Families First Coronavirus Response Act

The Families First Coronavirus Response Act (“Families First Act” or the “Act”) went into effect April 1, 2020. The Families First Act is an economic stimulus plan aimed at addressing the impact of the COVID-19 outbreak on Americans. The Act introduces paid sick leave for employees impacted by COVID-19 (including those serving as caregivers for individuals with COVID-19), by amending and expanding the Family and Medical Leave Act (“FMLA”) and by providing new benefits enabling employers and employees to cope with the current crisis.

Emergency Family and Medical Leave Expansion Act (“Emergency FMLA Expansion Act”)

- The Act significantly amends and expands the FMLA on a **temporary** basis. These provisions will expire on December 31, 2020.
- The current threshold requiring employers with 50 or more employees to provide FMLA coverage has been **changed**. Under the Act, employers having fewer than 500 employees must provide Emergency FMLA Expansion Act coverage.
- The Act also lowers the eligibility requirement: any employee who has worked for the employer for at least **30** days prior to the designated leave may be eligible to receive paid Emergency FMLA Leave.
- There are exceptions to the definition of employer and exemptions available for some employees. Additionally, the Secretary of Labor has authority to exclude some employers from the new requirements.
- Any individual employed by the employer for at least 30 days and who is unable to work or telework may take up to 12 weeks of job-protected Emergency FLMA leave, **but only** to care for the employee’s child (under 18 years of age) if the child’s school or place of care is closed or the employee’s childcare provider is unavailable due to a public health emergency.
- The first 10 days of Emergency FMLA Leave may be unpaid. During this 10-day period, an employee may elect to substitute any accrued paid leave (like vacation or sick leave) to cover some or all of the 10-day unpaid period. After the 10-day period, the employer generally must pay full-time employees at two-thirds the employee’s regular rate for the number of hours the employee would otherwise be normally scheduled, up to \$200 per day and \$10,000 in the aggregate per employee.

- Part-time employees or employees with an irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking Emergency FMLA Leave. Employees who have worked for less than six months prior to Emergency FMLA Leave are entitled to the average amount of hours that the employee reasonably expected when hired.
- Employers with 25 or more employees continue to have the obligation to return any employee who has taken Emergency FMLA Leave to the same or equivalent position upon the return to work. However, employers with fewer than 25 employees are generally excluded from this requirement if the employee's position no longer exists following the Emergency FMLA Leave due to an economic downturn or other circumstances caused by a public health emergency during the period of Emergency FMLA Leave. This exclusion is subject to the employer making reasonable attempts to return the employee to an equivalent position, and requires an employer to make efforts to return the employee to work for up to a year following the employee's Emergency FMLA Leave.
- Covered employers must post a notice of the Act's Emergency FMLA Leave requirements in a conspicuous place on their workplace premises. If a workplace is currently closed, or employees are working remotely, employers may email or direct mail the required notice to employees, or may post the notice on an employee information internal or external website. The Department of Labor has made a notice available for use by employers to post and distribute to employees.

Emergency Paid Sick Leave Act

- The Families First Act allows an eligible employee to take Emergency Paid Sick Leave because the employee is:
 1. subject to a federal, state or local quarantine or isolation order related to COVID-19;
 2. advised by a health care provider to self-quarantine due to COVID-19 concerns;
 3. experiencing COVID-19 symptoms and seeking medical diagnosis;
 4. caring for an individual subject to a federal, state or local quarantine or isolation order, or advised by a health care provider to self-quarantine due to COVID-19 concerns;
 5. caring for the employee's child if the child's school or place of care is closed, or the child's care provider is unavailable due to public health emergency; or
 6. 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.
- This provision requires employers with fewer than 500 employees to provide full-time employees with 80 hours of Emergency Paid Sick Leave at the employee's regular rate (or two-thirds of the employee's regular rate if the Emergency Paid Sick Leave is due to qualifying reasons 4, 5, or 6 listed above). As with the Emergency FMLA Expansion Act, the Secretary of Labor has authority to exclude certain businesses from these requirements.
- The Act places limits on Emergency Paid Sick Leave – \$511 per day up to \$5,110 total per employee for their own use, and \$200 per day up to \$2,000 total per employee to care for others and any other substantially similar condition.
- This Emergency Paid Sick Leave will not carry over to the following year and may be in addition to any paid sick leave currently provided by employers.

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- Employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking Emergency Paid Sick Leave. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work over a two-week period. A business employing fewer than 500 employees is required, at the request of the employee, to pay a full-time employee for 80 hours of mandated Emergency Paid Sick Leave instead of the initial 10 days of unpaid Emergency FMLA Leave permitted by the Emergency FMLA Expansion Act (summarized above).
- Like the Emergency FMLA Expansion Act, the Emergency Paid Sick Leave Act is **temporary**, and expires on December 31, 2020. Additionally, the same posting requirement for the Emergency FMLA Expansion Act applies to the Emergency Paid Sick Leave Act. The same Department of Labor poster may be used for both posting requirements.

Emergency Unemployment Insurance Stabilization and Access Act Of 2020

- This section of the Act provides \$1 billion in 2020 for emergency grants to states for activities related to unemployment insurance benefit processing and payment, under certain conditions.

Tax Credits for Emergency Paid Sick Leave and Emergency FMLA Leave

- This section provides a series of refundable tax credits for employers who are required to provide the Emergency Paid Sick Leave and Emergency FMLA Leave described above. These tax credits are allowed against the employer portion of Social Security taxes. While this limits application of the tax credit, employers will be reimbursed if their costs for qualified sick leave or qualified family leave wages exceed the taxes they would owe.
- Employers are entitled to a refundable tax credit equal to 100% of the qualified sick leave wages paid by employers for each calendar quarter in adherence with the Emergency Paid Sick Leave Act.
- Employers are entitled to a refundable tax credit equal to 100% of the qualified family leave wages paid by employers for each calendar quarter in accordance with the Emergency FMLA Expansion Act.

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