

## Families First Coronavirus Response Act Summary

HR6201 was signed into law 3/18/2020 effective April 1, 2020 (Per US DOL) and is set to expire December 31, 2020. This law covers private employers with fewer than 500 Employees.

Employers who provide leave will be allowed refundable credits against the employer portion of social security taxes 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. See your accountant or payroll professional.

The U.S. Department of Labor will be providing regulations to small businesses with fewer than 50 employees so they can apply for exemption from this law when it would jeopardize the viability of the business as a going concern. The regulations should be available by the middle of April 2020. Some of the important details are listed below:

### Emergency Paid Sick Leave

This provision requires employers to immediately (no waiting period) provide 80 hours of paid sick leave to all ELIGIBLE full-time employees (& part-time employees for the average hours over two weeks) to the extent that the employee is unable to work (or telework) due to a need for leave because:

- i. Pay full regular rate of pay (cap at \$511/day & \$5110/aggregate)
  1. Employee is subject to a federal, state or local quarantine or isolation order related to COVID-19
  2. Employee has been advised by healthcare provider to self-quarantine due to concerns related to COVID-19
  3. Employee is experiencing symptoms of COVID-19 and seeking medical diagnosis
- ii. Pay 2/3 of regular rate of pay or applicable minimum wage (cap at \$200/day & \$2000/aggregate)
  1. Employee is caring for individual who is quarantined or advised to self-quarantine related to COVID-19
  2. Employee is caring for their son or daughter due to school, place of care closures or because childcare provider is unavailable due to COVID-19 precautions
  3. Employee is experiencing any other substantial similar condition specified by HHS

Paid emergency sick leave ceases when the employee no longer has a need for leave employee returns to work, or 80 hours of sick leave has been used. Unused emergency paid sick leave does not carry over into 2021. Employer must not require an employee to use other paid leave first and the employer is not required to pay out this emergency paid sick leave if the employee separates.

The U.S. Department of Labor will be providing regulations to small businesses with fewer than 50 employees so they can apply for exemption from this law when it would jeopardize the viability of the business as a going concern. The model notice regarding this act must be posted by the employer. Employers may not discharge, discipline or in any other manner discriminate against any employee takes leave under this law or who files a complaint related to this law.

Employers may modify their existing Paid Time Off policies due to economic conditions and/or changes in operating conditions during this crisis and will need to be addressed by each employer based on their specific situation.

Employers may require the employee to contact the employer regularly while out on paid sick leave and provide notice of their return to work date.

An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the provisions. See legal counsel opinion to see if you qualify.

## Families First Coronavirus Response Act Continued:

### Emergency FMLA Expansion

The Act temporarily amends the FMLA to allow an employee (if actively employed for 30 days) who works for an employer with 1 to 500 employees to take up to 12 weeks of job protected leave if they are unable to work (or telework) for the following reason:

- i. To care for the employee's son or daughter (under 18 years of age) if the child's elementary or secondary school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency with respect to COVID-19 declared by a federal, state, or local authority.

Under the Emergency FMLA Act when leave is needed due to a school or day care closure, the employer can provide the first 10 days of leave unpaid, then subsequent absences for this reason must be paid at 2/3 the employee's regular rate of pay. The Act includes a cap of \$200 a day and \$10,000 in aggregate. If the first 10 days are unpaid, an employee may elect to substitute any accrued vacation leave, personal leave, or medical/sick leave for the unpaid leave.

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 FMLA leave. Employees who have worked for less than six months prior to leave are entitled to the employee's reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.

The Emergency FMLA offers job protection, however, the FMLA's requirement that an employee be restored to the same or equivalent position after leave does not apply to an employer with fewer than 25 employees if the employee's position no longer exists due to economic conditions or other changes in the employer's operations that affect employment and are caused by the public health crisis during the period of leave.

The employer must make reasonable efforts to restore the employee to the same or an equivalent position, and if the reasonable efforts fail, the employer must make efforts to contact the employee and reinstate the employee if an equivalent position becomes available within a one-year period beginning on the earlier of (a) the date on which the qualifying need related to a public health emergency concludes, or (b) the date that is 12 weeks after the date the employee's leave started.

The Emergency FMLA provisions require employees to provide the employer with "notice of leave as is practicable."

A provision in this law allows a healthcare provider or an emergency responder to elect to exclude the employee from the application of the law.

See full legislation at: <https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>

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