

CCM ALERT

March 19, 2020

The Families First Coronavirus Response Act Is the Law of the Land Until it Sunsets on December 31, 2020.

President Trump signed the Families First Coronavirus Response Act last evening which provides employees affected by coronavirus with paid sick leave and paid Family and Medical Leave Act (FMLA) benefits. Much of what we wrote about this Act this past [Monday](#) remains accurate, but there were a few changes. The Act takes effect April 2, 2020.

Emergency Paid Sick Leave

Question: What Employers are covered?

Answer: All private employers with 500 or fewer employees. All public employers.

Question: Which Employees are eligible for paid leave?

Answer: Employees who have worked for their employer for 30 days or more. Employees who work for certain health care providers or emergency responders may be excluded from taking this leave.

Question: How much leave must Employers provide?

Answer: Full-time employees are entitled to up to 80 hours of paid sick leave. Part-time employees are entitled to the average number of hours worked over a two-week period.

Question: Are there any Monetary Caps on the Paid Sick Leave that Employers Must Provide?

Answer: Yes. For each employee there is a cap of \$511 per day and \$5,110 in the aggregate if leave is taken for reasons 1-3 below.

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If an employee takes paid sick leave for reasons 4 – 6 below the cap is \$200 per day and \$2,000 in the aggregate and employees may be paid at a rate of 2/3 their salary.

Question: What can this new leave be used for?

Answer: It can be used under a variety of scenarios which are broadly classified as: 1) employee is quarantined, 2) employee has COVID-19, 3) employee has symptoms of COVID-19 and is seeking medical advice, 4) employee is caring for someone with COVID-19, 5) childcare if the employee's children's schools are closed, and 6) employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Question: My business already has paid sick leave, is this leave in addition to my business's policy?

Answer: Yes. The paid leave provided by this proposed law is in addition to any employer-provided paid leave. Now that the legislation has passed employers are prohibited from revising their policies.

Question: How will private sector businesses pay for this new entitlement?

Answer: Refundable FICA tax credits but these tax credits will not cover the full cost to employers.

Question: Can we require medical certification of an employee's health condition before we grant leave under the Act?

Answer: No.

Question: How soon must we start granting this leave?

Answer: April 2, 2020 until December 31, 2020.

Emergency FMLA Leave

Question: What Employers are covered?

Answer: All private employers with 500 or fewer employees. All public employers. *Employers with fewer than 50 employees will be exempted by the Secretary of Labor.*

Question: Which Employees are eligible for FMLA leave?

Answer: Any individual who has been employed with her employer for at least 30 calendar days. Normal FMLA leave still requires employees to have been employed for 12 months and accrued at least 1250 hours. *Employees of health care providers and emergency responders may not be eligible for this leave.*

Question: How much leave must Employers provide?

Answer: 12 weeks. This is a total number. It is not in addition to any other FMLA leave. So if an employee used 6 weeks of "normal" FMLA leave they have 6 weeks of emergency FMLA available.

Question: What can this new leave be used for?

Answer: To care for an employee's son or daughter under the age of 18 if the child's school or place of care is closed, or if the child's normal care provider is unavailable, due to a public health emergency.

There is no emergency FMLA for employees caring for themselves or other family members. Under these circumstances, employees will need to use regular FMLA to the extent they are eligible.

Question: What rate of pay must employees receive?

Answer: The first 10 days of leave is to be unpaid, though employees will be entitled to substitute available paid leave (including the emergency sick leave discussed above). During the remaining period of leave, employees are entitled to paid leave at the rate of at least 2/3 their regular rate of pay.

The emergency bill caps emergency paid leave at \$200 per day and \$10,000.00 in the aggregate.

Question: Can we require certification before we grant emergency FMLA.

Answer: We expect the Department of Labor to issue regulations allowing certification. *Remember, emergency FMLA is only available to care for children under the age of 18.*

Question: Will employees be entitled to paid leave if an employer shuts down or sends some employees home in connection with the coronavirus situation?

Answer: The new emergency sick leave and FMLA leave provisions do not appear to apply to situations where an employer directs an otherwise healthy employee not to work to promote “social distancing” or because the employer is completely or partially shutting down operations during the crisis. Employees who find themselves out of work for these reasons may be eligible for unemployment benefits, and states and the federal government may be expanding the availability of benefits for coronavirus-related job losses.

Question: Can an employer require employees to use employer-provided leave first?

No. Employees may take leave provided under this law first and then still take any employer-provided leave once leave under these laws is exhausted.

Question: How will private sector businesses pay for this new entitlement?

Answer: Refundable FICA tax credits.

Question: How must employers notify employees of this new leave?

Answer: The Department of Labor will issue a poster on or before March 30, 2020.

Conclusion

This new legislation becomes effective April 2, 2020. HR Professionals must ask employees why they need leave from work so they can discern what level of reimbursement the employee is entitled to. Employers cannot require certification under paid sick leave. Emergency FMLA leave, as a practical matter, only applies to employers over 50 employees and the only covered reason for this leave is to care for sons or daughters under the age of 18 who are in school.

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