



Effect of the Families First Coronavirus Response Act on Employers

By Jascha K. Clark

On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act (“**Act**”).¹ The Act provides for free coronavirus testing, enhances Unemployment Insurance, strengthens food security initiatives, and increases federal Medicaid funding to states. Further, and of particular interest to employers, the Act (1) mandates that covered employers provide their employees with up to two weeks of “emergency paid sick leave,” and (2) expands the Family and Medical Leave Act (“**FMLA**”) to cover certain leave necessitated by the COVID-19 public health emergency, including requiring paid FMLA leave under certain circumstances.

Specifically, the Act requires covered employers to provide emergency paid sick leave to employees who are unable to work (or telework) because the employee:

- (1) is subject to a quarantine or isolation order related to COVID-19;
- (2) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

¹The United States House of Representatives initially passed the Act on March 14, and subsequently made extensive “technical revisions” to the Act on March 16. The Senate passed the revised Act, without amendment, on March 18. The text of the final Families First Coronavirus Response Act can be found [here](#).



(3) is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;

(4) is caring for an individual who is subject to a quarantine or isolation order related to COVID-19, or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(5) is caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or

(6) is 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.

Employees will be entitled to approximately two weeks of sick leave: 80 hours for full time employees, and the average number of hours worked over a 2-week period for part-time employees. If the leave is for the employee themselves (i.e. for issues (1) through (3) above), the rate of pay is the employee's regular rate, however that pay is capped at \$511 per day and a total of \$5,110. If the leave is to care for others (i.e. for issues (4) and (5) above), the rate of pay is two-thirds of the employee's regular rate, and that pay is capped at \$200 per day and a total of \$2,000.

The emergency paid sick leave provision applies only to employers with 500 or fewer employees. Further, employers who employ certain health care providers and emergency responders may elect to exclude those employees from coverage. Notably, this new sick leave must be provided in addition to any paid leave already provided by covered employers and covered employers cannot require employees to use other leave before using this sick leave.

The Act also expands the FMLA to provide paid leave for certain qualifying needs related to the COVID-19 public health emergency. What this means is that the FMLA now provides employees with up to 12 weeks of leave that could be used for traditional unpaid FMLA leave, or paid leave if they are unable to



work (or telework) because they are caring for their minor child because the child's school or place of care has been closed, or the child's care provider is unavailable, due to COVID-19.

Under this public health emergency expansion of the FMLA, the first 10 days of leave may be unpaid leave (likely as a result of the aforementioned two weeks of emergency paid sick leave), however, employees may elect to substitute any accrued vacation leave, personal leave, or sick leave for the first 10 days. Meanwhile, day 11 and beyond (up to 12 weeks) must be paid leave (1) equal to at least two-thirds of the employee's regular rate of pay and (2) for the number of hours the employee would otherwise be normally scheduled to work, however this pay is capped at \$200 per day and a total of \$10,000.

The paid/unpaid distinction is not the only important difference between traditional-FMLA leave and the public emergency FMLA expansion. For example, where the FMLA traditionally applies only to employers with 50 or more employees, the public emergency FMLA leave applies to all employers who employ less than 500 employees.² Also, employees become entitled to the public emergency FMLA leave after being employed for 30 calendar days, while employees are only entitled to traditional-FMLA leave after they have worked for their employer for at least 12 months, and worked at least 1,250 hours over the prior 12 months.

Notably, although the provisions described above that expand FMLA leave and provide emergency sick leave are only temporary—they both expire on December 31, 2020—it is important for employers to start preparing to implement this new law, as the Act takes effect within 15 days of its enactment.

If you have any questions regarding how the Families First Coronavirus Response Act might affect your company, you should consult legal counsel. The lawyers in [Ray Quinney & Nebeker's Employment Section](#) would be happy to assist you with any questions you may have.

² The Act gives the Secretary of Labor the authority to issue regulations to exempt from the public emergency FMLA leave: (1) employers with less than 50 employees if compliance would jeopardize the viability of the business, and (2) certain health care providers and emergency responders.