



CLIENT ALERT
March 26, 2020

CORONAVIRUS (COVID-19)
And
The Families First Coronavirus Response Act

Families First Coronavirus Response Act (“FFRCA”)

On 3/18/2020, President Trump signed H.R. 6201 into law which becomes effective [4/2/2020](#) through 12/31/2020. This Act includes multiple pieces of legislation including, most pertinently, the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act, which temporarily require Employers to provide employees with certain sick leave benefits and expanded family and medical leave for specified reasons related to COVID-19, including the provision of paid leave.

A summary of these provisions and important notes on forthcoming requirements, Department of Labor guidance and model notice, enforcement, and resources regarding employer tax credits are provided below.

Emergency FMLA Expansion Act

Provides expanded FMLA leave to include public health emergency leave

1. Applies to all Employers with less than 500 employees; employers with less than 50 employees may seek a waiver under certain conditions
2. Expanded FMLA Rights
 - a. Any employee employed for at least 30 days is eligible and will receive leave if the employee has a qualifying reason.
 - b. New FMLA Qualifying Reason of public health emergency need: An employee who cannot work (or telework) due to a need for leave to take care of the employee’s son or daughter (under the age of 18) if the child’s school, childcare provider is closed or unavailable due to COVID-19 public health emergency.
 - c. First 10 days are **unpaid** unless employee opts/ elects to use accrued paid leave (vacation, person, or sick) to cover any portion of the first 10 days. Employees cannot be required to do so, however.
 - d. After the initial 10 days, the leave becomes **paid leave** provided at an amount that is not less than two-thirds (2/3) of the employee’s regular rate of pay, but not to exceed \$200 per day or exceed \$10,000 in the aggregate, per employee (note that including the first ten days, if paid leave is received during that time, renders the ultimate aggregate amount \$12,000)

Emergency Paid Sick Leave Act:

The second prong of the “Families First Coronavirus Response Act” (H.R. 6201) creates a new or additional sick leave entitlement.

1. All employees are eligible (even if only worked 1 day), **if they have certain COVID-19 qualifying reasons**

2. Under H.R. 6201 Employers will have to provide up to 80 hours of paid sick leave benefits if a qualifying employee
3.
 - a. Has been ordered by the government to quarantine or isolate because of COVID-19.
 - b. Has been advised by a health care provider to self-quarantine because of COVID-19.
 - c. Has symptoms of COVID-19 and is seeking a medical diagnosis.
 - d. Is caring for someone who is subject to a government quarantine or isolation order or has been advised by a health care provider to quarantine or self-isolate.
 - e. Needs to care for a son or daughter whose school or childcare service is closed due to COVID-19 precautions
 - f. Is experiencing substantially similar conditions as specified by the secretary of health and human services, in consultation with the secretaries of labor and treasury.
4. Full time employees can get up to 80 hours and part timers get an average of hours during a 2-week period.
5. Pay entitlement:
 - a. Limited to \$200 per day up to \$2,000 per employee when the employee is caring for an individual or child under d and e above.
 - b. For those employees who are subjected to quarantine, self-quarantine or suffering from COVID-19 symptoms and seeking a medical diagnosis (above, a-c) is limited to no more than their per diem wages not to exceed \$511 per day or \$5,111 in aggregate.
6. An employer cannot require an employee to utilize existing available sick time before this entitlement.
7. Entitlement to this emergency paid sick leave ends when an employee refuses to work immediately following the termination of their emergency paid sick time.
8. Paid sick time under these provisions does not carry over and is not paid out upon separation from employment; it is use it or lose it.
9. Employer must post a Notice of the requirements of the Act in customary places with other labor-law related postings. A link to this Notice (for non-federal employees), and related Department of Labor Guidance with questions and answer on the posting of this Notice, are provided below.

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
<https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>

Additionally, on March 24, 2020, the Department of Labor published 3 separate guidance documents on the provision of paid leave benefits under the Families First Coronavirus Response Act, which are listed below for your reference:

[Fact Sheet for Employees](#)
[Fact Sheet for Employers](#)
[Questions and Answers](#)

Please also note the following:

1) The Department of Labor has confirmed that it will observe a temporary period of non-enforcement for the first 30 days after the Act takes effect, so long as the employer has acted reasonably and in good faith to comply with the Act. For purposes of this non-enforcement position, “good faith” exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.

2) On Friday, March 20, 2020, the IRS issued a Newswire, IR-2020-57 discussing these benefits and explaining how they will be subsidized by the federal government through a dollar for dollar refundable payroll tax credit. Per the IRS Guidance, the aim of the payroll tax credit is to make the paid FMLA and sick leave benefits cost neutral and cashflow neutral for employers. A link to the IRS-2020-57 Newswire is provided below:
<https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>

Beard Legal Group monitors these legislative developments on a daily basis. Please do not hesitate to contact us with any specific concerns arising for your organization.

While the Beard Legal Group Client Alert is designed to provide information on topics of concern, it is not legal advice and Employers should contact their Legal Counsel for advice related to their specific circumstances.