

Families First Coronavirus Response Act (H.R. 6201)

What's in It and How Will it Affect Your Business?

Congress has passed the Families First Coronavirus Response Act that will affect the paid leave benefits business provide their employees. The effective date will be April 2, 2020 through December 31, 2020. Below is a brief summary of the leave benefits provided in the Act that may affect your business.

What Businesses are Affected?

Employers with less than 500 employees must provide these leave benefits. The Secretary of Labor may exempt small businesses with fewer than 50 employees if the imposition of such requirements would jeopardize the viability of the business as a going concern. However, at this time, it is not known if the Secretary of Labor will provide this exemption and what would be required to obtain the exemption.

The leave must be provided to all employees who have been employed by the company at least 30 days regardless of their length of employment.

Employers may exclude health care providers and emergency responders from these paid leave requirements.

Paid Sick Leave

Under the Emergency Paid Sick Leave Act, Employers with less than 500 employees must offer two weeks of paid sick and family leave (80 hours for full-time and average of hours for part-time) to employees who:

- (1) are experiencing symptoms of COVID-19 and seeking a medical diagnosis,
- (2) are in Federal, state, or local ordered quarantine,
- (3) have been advised by a health care provider to self-quarantine,
- (4) are caring for a family member who is in quarantine or self-quarantine,
- (5) are caring for a child whose schools have closed or the child care provider is unavailable, or
- (6) are 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.

Pay Rates and Limits

- Pay rate for self-care (1, 2, and 3 above) is 100%, but cannot exceed \$511 per day and \$5,110 in the aggregate
- Pay rate for leave to care for a family member (4, 5, and 6 above) is 67% but cannot exceed \$200 per day and \$2k in the aggregate

Other details for Paid Sick Leave

- No carryover of the sick leave to the next year
- Employer cannot require them to use other leave benefits before the employee uses this paid sick leave
- Cannot retaliate (discharge, discipline, or discriminate) against an employee who takes paid leave under the act
- After the first workday on which the employee receives paid sick leave, the employer can require the employee provide reasonable notice to continue to receive the paid sick leave

Notice Requirements

Employers must post a notice to employees about the requirements for this paid sick leave. The Secretary of Labor should provide form of notice within a week.

Paid FMLA Leave

For the COVID-19 crisis only, this FMLA has been expanded to include businesses with less than 50 employees. The FMLA has strict notice requirements and many traps for the unwary. Employers that have never had to administer FMLA leave before because they have been below the usual 50-employee threshold should familiarize themselves with the notice, non-discrimination, and other requirements of the FMLA.

NOTE: Furloughed employees are included for purposes of calculating the number of employees to determine if a company is subject to FMLA. At this time, it's not clear if furloughed employees are eligible for receiving this new FMLA benefit. Thus, if you need to furlough an employee, you should discuss with your attorney if it would be better to do a layoff instead.

Pay rate and limits

Employers must provide employees with a qualifying need related to COVID-19 a total of 12 weeks of paid leave at least 67% of the pay rate. The paid leave may not exceed \$200 per day and \$10k in the aggregate. The first 10 days of FMLA leave may be unpaid, but the employee may take accrued paid sick or vacation leave in lieu of the unpaid leave.

Qualifying Need

A qualifying need is where an employee is unable to work (or telework) due to a need for leave to care for their child (under 18) if the child's school or childcare provider is closed or unavailable due to COVID-19.

Penalties

Only employers that are covered by the existing requirements of the FMLA (employers with 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year) are subject to penalties in a suit brought by an employee for violation of the leave entitlement granted by the new qualifying reason.

Restoration to Position

Typically, an employee who takes FMLA leave must be restored to the employee's position (or one that is substantially equivalent) on return from such leave. However, under certain conditions, employers with fewer than 25 employees will not be required to restore the employee's position when that position ceases to exist due to economic conditions or other changes in the operating conditions of the employer caused by a public health emergency during the period of leave.

Tax Credits for Providing the Paid Leave

Employers will receive tax credit for the paid sick leave, paid FMLA leave and for health plan expenses. Although the Act provides the credit is equal to 100% of the amount of paid leave, there are limitations on the credit. Consult your CPA to determine the amount of credit.

Help for Small Businesses

Small businesses can apply for an interest free, long-term SBA loan for disaster relief to help cover these paid leave and other expenses at:

<https://disasterloan.sba.gov/ela/>