

Workplace Impacts of Families First Coronavirus Response Act

On March 18, 2020, President Trump signed the [Families First Coronavirus Response Act](#) into law. It is expected to take effect April 2, 2020. There are many provisions to this bill not covered in this analysis, such as the offering of free testing and food aid as well as adding \$1 billion to state unemployment funds. There are also many aspects of this law that require further information and clarity. Our effort here is to provide interpretation of the law's provisions as they relate to employers as best we know them at this point (March 20, 2020). However, please be aware that there may be some changes until the law is in effect on April 2, 2020.

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The Families First Coronavirus Response Act creates two separate Acts – the **Emergency Paid Sick Leave Act** and the **Emergency Family and Medical Expansion Act**, both of which **apply to employers with fewer than 500 employees**. A good analysis of this Act by the [Washington Post](#) can be found here.

Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act requires employers with fewer than 500 employees to provide two weeks (10 business days) of paid sick leave to full-time and part-time employees in addition to their current existing and banked sick leave, regardless of how long they worked for the company. Full-time employees will be eligible for up to 80 hours of paid sick time; part-time employees will be eligible based on the average number of hours they have worked over a 2-week period during the previous 6 months. It covers employees who, as a result of this pandemic, are unable to work, either in the workplace or remotely. The provisions of the act expire December 31, 2020. The Act:

- ❖ Requires employers to provide **up to two (2) weeks / ten (10) business days of paid leave (up to \$511 per day based on regular wages or \$5,110 total)** for employees who:
 - Are being tested or treated for or have been diagnosed with COVID-19
 - Who have been told by a doctor or government official to stay home because of exposure to or showing symptoms of COVID-19 (mandatory quarantine or self-quarantine)
- ❖ Requires employers to provide **up to two (2) weeks / ten (10) business days of paid leave (up to 2/3 of regular pay up to \$200 per day or \$2,000 total)** for employees who:
 - Have children whose school or daycare provider is closed
 - Have family members affected by coronavirus

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Employer-provided Emergency Sick Leave pay will be **fully reimbursed by the federal government** through the end of 2020 through refundable quarterly tax credits to offset Social Security payroll taxes. Federally reimbursed paid sick time is capped at \$5,110 plus employer-paid or supported health insurance costs per employee (for those being tested, treated or diagnosed with COVID-19 or those with symptoms or exposure to COVID-19), or \$2,200 plus health insurance costs per employee (for those caring for children out of school or tending to family members affected by coronavirus).

Employers **with fewer than 50 employees** may apply for hardship waivers and may apply to have funds advanced to them.

According to the Act, the Secretary of Labor has the right to **exempt businesses with fewer than 50 employees**, along with healthcare providers, emergency responders, other related companies, if paying sick time would cause a hardship. The provisions of the act expire December 31, 2020.

At this point, we do not know how “hardship” is defined or what the process for obtaining a waiver or exemption entails.

Employer responsibilities:

- ❖ Post notice of requirements (to be available from the Secretary of Labor by March 25, 2020)
- ❖ Offer all eligible employees paid sick time according to their situation
- ❖ Do not require eligible employees to use other paid time off until Emergency Paid Sick Leave is exhausted
- ❖ Apply for a waiver or request for advanced funds if your situation warrants it. Presumably details will be forthcoming.
- ❖ Apply for tax credit each quarter to cover covered amounts (up to \$511 per day and/or \$200 per day per covered employee). Credit may also be received for the portion of the employer’s expenses paid or incurred to provide and maintain group health insurance during this emergency sick leave

Affinity HR Group will provide all necessary notifications and Emergency Paid Sick Leave policy language as it is developed.

Emergency Family and Medical Expansion Act.

The Families First Coronavirus Response Act also created the **Emergency Family and Medical Expansion Act**. This Act amends the existing [Family and Medical Leave Act \(FMLA\)](#) to provide job- and benefit-protection for absences related to COVID-19 pandemic for employees who have been

employed for at least 30 days and who are unable to work in the workplace or remotely (telework) due to the need to care for a minor child if the child's school or place of child care has been closed. The provisions of this act **apply only to those unable to work due the need to care for a child out of school or daycare.**

The Act has the following provisions:

- ❖ The first ten (10) days of Emergency Leave is unpaid but employees may elect to use available paid time off (vacation, sick ,etc.).
- ❖ After the first ten (10) days, employers must provide paid leave of 2/3 regular wages **up to \$200 per day, not to exceed \$10,000 total** for those tending to children out of school or daycare.

This emergency paid sick leave will be **fully reimbursed by the federal government** through the end of 2020 through refundable quarterly tax credits to offset Social Security payroll taxes. Federally reimbursed emergency leave **is capped at (\$10,000 per covered employee) plus expenses paid or incurred to provide or maintain a group health plan during the paid sick time**

Employers with 25 or more employees must restore employees to same or equivalent position without loss of benefits

Employers with fewer than 25 employees do not need to restore to the equivalent position if all of the following apply:

- ❖ the position held by the employee no longer exists due to economic conditions or changes impacting the employer's operations and are related to the public health emergency; and
- ❖ the employer makes a reasonable effort to restore the employee to the equivalent position; and
- ❖ if the employer is unable to restore the employee to the equivalent position, the employer makes reasonable efforts to reach out to the employee if an equivalent position becomes available within one (1) year of when the public health emergency concludes or 12 weeks after the employee's leave commences, whichever is earlier

The Secretary of Labor has the right to **exempt businesses with fewer than 50 employees** from providing these protections if providing this protection would cause a hardship. The Act classifies size based on employers who had or have 50 or more employees during each of the 20+ calendar workweeks in the current or prior year.

Should an employer with fewer than 50 employees fail to provide Emergency Family and Medical Leave, they will not be subject to civil actions brought by employees, but they may be subject to civil

actions brought by the Secretary of Labor (unless exempted by the Secretary). The provisions of this Act are set to expire on December 31, 2020

Employer responsibilities:

- ❖ Offer all eligible employees Emergency Family and Medical Leave
- ❖ Do not require eligible employees to use other paid time off
- ❖ Apply for tax credit each quarter to cover covered amounts (up to \$200 per day per covered employee)
- ❖ Remember, credit may also be received for the portion of the employer's expenses paid or incurred to provide and maintain group health insurance during this emergency sick leave

Recommended Actions

There are still many provisions that are not finalized in these laws. We recommend that you evaluate your responsibilities under new legislation based on your size and industry. Contact Affinity HR Group if you require assistance with this effort. As soon as possible, provide employees with the proper notice of eligibility or ineligibility. Let employees know their coverage options as soon as possible. As soon as you realize them, you should apply for waivers and/or credits if necessary.

As always in times of crisis, communicate regularly with your employees about their situation as well as the company's situation given the challenging environment and changing circumstances. Lack of information dramatically impacts the ill effects of anxiety and despair during times of great uncertainty.

Of course, continue to limit exposure and, if possible, identify creative ways to allow impacted employees to work from home. Finally, as much of this pandemic response is occurring at the state and local level, continue to monitor legislative updates, official health notices, school closures, quarantines, or "stay-at-home" orders. Affinity HR Group will continue to monitor events as they change and will make every attempt to help you navigate these uncertain times.

Other Federal Actions of Interest

- ❖ On March 17, 2020, President Trump invoked the [Defense Production Act](#) which gives him the authority to direct private industry to produce items needed for the defense of the country such as medical supplies. Depending on your industry and line of business, this may have an impact on your company.

- ❖ Currently, Congress and the White House are working on [pending legislation on mailing checks](#) to send money directly to Americans who qualify. While nothing is finalized and official, current estimates are that checks for \$1,000 to \$2,000 will be mailed out April 6 and May 18. The [most recent Republican proposal](#) would send \$1,200 to tax filers who make less than \$75,000 with a phased reduction for filers who make up to \$99,000 per year and people with no tax liability receiving \$600. This proposal also includes loans for small businesses with fewer than 500 employees with loan forgiveness terms for companies who meet payroll through June 30, 2020 and those who offer more income to tipped employees.
- ❖ The federal government is allowing states to make unemployment laws more flexible such as waiving the one-week waiting period and requirement to search for a job during this period. Some states are also relaxing the circumstance requirements to allow those whose hours have been reduced and part-time employees to apply. You may recommend to any employee whose hours have been reduced or job eliminated to apply for unemployment as soon as possible.
- ❖ Some states are opening up their health care exchanges to allow newly-uninsured individuals to purchase insurance and apply for subsidies due to economic hardships.

Every day brings new news, legislation, restrictions, and guidelines to understand, apply, and manage. Affinity HR Group is committed to providing you with the most current information as it becomes available. If you need assistance on a specific question or situation, please contact us at contact@affinityhrgroup.com or call us at 877-660-6400.