



EMPLOYMENT LAW ALERT – MARCH 18, 2020

Federal Legislation Regarding Coronavirus Economic Impact
What Employers Need to Know

United States employers have been anxiously awaiting the passage of the Families First Coronavirus Response Act (FFCRA) which was passed by the House of Representatives (H.R. 6201) and was finally approved by the Senate today. Pared down to the essentials, the following is what employers need to know:

Although an Emergency Measure, the FFCRA Does Not Take Effect for Fifteen Days

- The implementation delay provides employers with fifteen additional days to make important decisions regarding lay-offs, terminations or furloughs.

Employers Required to Provide 80 Hours of Paid Sick Leave

- The FFCRA requires employers with fewer than 500 employees to provide their employees with 80 hours of paid sick leave for reasons related to the coronavirus pandemic. The 80 hours of sick leave is *additional to* paid sick leave required by law (such as the Massachusetts Sick Leave Law which requires employers with more than 10 employees to provide paid sick leave and employers with 10 or fewer employees to provide unpaid sick leave).
- Paid Sick Leave Reasons: The FFCRA allows employees to use sick leave for the following reasons: (1) to comply with a requirement or recommendation to isolate or quarantine due to exposure to, or symptoms of, coronavirus; (2) to isolate because the employee is diagnosed with coronavirus; (3) to obtain a diagnosis or care because the employee is exhibiting symptoms (note that tests are still in very short supply and only those exhibiting significant symptomology can obtain tests); (4) to care for or assist an at-risk family member who is self-isolating due to a diagnosis or who is exhibiting symptoms of coronavirus and needs to obtain medical care or a diagnosis, or who is adhering to requirement or recommendation to isolate or quarantine due to a exposure to, or symptoms of, coronavirus; or (5) to take care of the employee's child if the child's school or child care has been closed due to the coronavirus.
- Pay Amount: An employee who is out sick due to categories 1 through 3 above must be paid at the employee's regular rate of pay up to a cap of \$511 per day. Employees who are absent due to categories 4 or 5 above must be paid two-thirds the employee's regular rate of pay up to a cap of \$200 per day. Part-time or irregularly scheduled employees must be paid based on the average number of hours the employee worked for the six months prior to taking paid sick leave. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work.

- Additional Provisions – FFCRA paid sick leave is for these emergency, coronavirus-related purposes and will not carry over from year to year. Employers may not change leave policies to avoid the obligations of the FFCRA additional leave requirements.
- This provision of the FFCRA will expire on December 31, 2020.

Emergency Family And Medical Leave Act (FMLA) Expansion

- Expanded Coverage And Eligibility: The FFCRA expands the FMLA on an emergency, temporary basis to employers with fewer than 500 employees in a workplace. Employees are eligible if they have worked for the employer for at least 30 days prior to the designated leave. Obviously, employers who were not previously subject to the FMLA must provide job-protected leave to employees for a coronavirus-designated reason.
- Reasons For Emergency FMLA Leave: Any qualified employee may take up to 12 weeks of paid, job-protected leave for the following reasons: (1) to comply with a requirement or recommendation to isolate or quarantine due to exposure to, or symptoms of, coronavirus; (2) to care for an at-risk family member who is adhering to requirement or recommendation to isolate or quarantine due to exposure to, or symptoms of, coronavirus; or (3) to take care of the employee's child if the child's school or child care has been closed due to the coronavirus emergency.
- Paid and Unpaid Leave: The first 14 days of Emergency FMLA may be unpaid, but an employee may elect to substitute any accrued paid time off, including vacation or sick leave (and including paid leave provided by the paid sick leave provision of the FFCRA), to cover some or all of the 14-day unpaid period. After the 14-day period, the employer must pay full-time employees at two-thirds the employee's regular rate of pay for the number of hours the employee would otherwise be normally scheduled. Part-time or irregularly scheduled employees must be paid based on the average number of hours the employee worked for the six months prior to taking paid sick leave. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work. Paid FMLA under the FFCRA, however, is capped at \$200 per day and \$10,000 in total.
- Expanded Definitions – The FFCRA expands the definition of a "parent" under FMLA, to include a parent-in-law of the employee, a parent of a domestic partner of the employee, and a legal guardian or other person who served as the employee's parent when the employee was a child.

Tax Credits

- Employers are eligible for a series of refundable tax credits for either FFCRA paid sick or family medical leave described above. Employers should consult their tax expert or preparers for more information regarding the tax credits.

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