

# THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

On March 18, 2020, the President signed the Families First Coronavirus Response Act (the Act) into law. The Act aims to address the impact of COVID-19 (or coronavirus) on private sector employers and employees. Among the provisions, the legislation includes:

- Expansion of the Family Medical and Leave Act (FMLA) to provide up to 12 weeks of temporary additional protected leave due to reasons related to COVID-19.
- Requirement to provide emergency paid sick leave to full-time, part-time and varying hour employees affected by COVID-19.
- Provision of payroll tax credits to employers providing paid time off under the protected leave provisions.

Detailed information regarding the above is found in the following chart.

NOTICE REQUIREMENTS	EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT	EMERGENCY PAID SICK LEAVE ACT
Overview	Temporary expansion of FMLAs 12-week job-protected leave.	Employers must provide paid sick time to the extent the employee is unable to work or telework due to specified COVID-19 related reasons.
Counting Employees to Determine Applicability	Affected Employers	
Effective Date	The program was set to expire December 31st, but employers have the option to extend the program to March 31st. They will still receive tax credits if they follow the program as originally intended, meaning a maximum of 80 hours per employee since its inception.	
Exemptions	The Secretary of Labor may adopt regulations to: (a) exclude health care providers and emergency responders and (b) exempt business with fewer than 50 employees if leave would jeopardize the viability of the business.	The Secretary of Labor may adopt regulations to: (a) exclude health care providers and emergency responders, (b) exempt business with fewer than 50 employees if leave would jeopardize the viability of the business and (c) as needed.
Eligible Employer	Employers with fewer than 500 full-time and part-time employees within the United States.	
Eligible Employee	Any employee that has worked for the employer for at least 30 days.	All employees of the covered employer.

<p><b>What is paid?</b></p>	<p>The first 10 days of leave the employee may be unpaid, but the employee may choose to use accrued vacation leave, personal leave, or other medical or sick leave during that time. Although, the employer cannot compel an employee to use their accrued paid leave.</p> <p>Following that 10-day period, employers must provide paid leave at no less than two-thirds of the employee's regular rate of pay for the number of hours the employee would have been normally scheduled to work. Part-time employees' rate of pay is based on the average number of hours worked in the prior six months. In the case where the employee worked less than six months, the pay is based on the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.</p> <p>Pay is capped at \$200 per day and \$10,000 in the aggregate per person.</p>	<p>Affected full-time employees are entitled to 80 hours of paid sick time. Part-time employees are provided paid sick leave equal to the number of hours that they worked on average over a two-week period. Employees that worked for less than six months will receive paid sick leave based on the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work. Within 15 days after the enactment of the Act, the Secretary of Labor will issue guidelines assisting employers in calculating the amount of paid sick leave.</p> <p>Leave to care for oneself provides employees with their regular rate of pay, or the minimum wage rate per FLSA, or the minimum wage rate in effect for the employee in the applicable State or locality whichever is greater subject to a \$511 per day cap and \$5,110 in the aggregate. However, when caring for someone else, sick leave is paid at two-thirds the employee's regular rate or minimum wage rate capped at \$200 per day and \$2,000 in the aggregate per person.</p>
<p><b>Reasons for Leave</b></p>	<p>Employee is unable to work or telework due to the need to provide care for a son or daughter (under 18 years old) if the child's school or place of childcare has been closed or is unavailable due to coronavirus.</p>	<p>Employee is unable to work (or telework) due to:</p> <ul style="list-style-type: none"> <li>• the employee is subject to a Federal, State or local quarantine order related to COVID-19.</li> <li>• being told by a doctor to self-quarantine because of COVID-19.</li> <li>• the employee is experiencing symptoms of COVID-19 and seeks a medical diagnosis.</li> <li>• leave to care for someone subject to a Federal, State or Local quarantine or isolation order related to COVID-19 or the individual is advised by a doctor to self-quarantine.</li> <li>• care for a son or daughter whose school or place of care has been closed, or childcare provider is unavailable due to COVID-19 precautions.</li> <li>• the employee is experiencing any other substantially similar condition specified by HHS.</li> </ul>
<p><b>Job Restoration</b></p>	<p>FMLA restoration rights apply to employers with 25 or more employees.</p> <p>Exception: For employers with fewer than 25 employees, restoration rights do not apply if:</p> <ul style="list-style-type: none"> <li>• the position no longer exists due to economic conditions or changes in the operating conditions of the employer that affect employment and are caused by a public health emergency during the period of leave;</li> <li>• a good faith effort is made to try to restore the employee to an equivalent position; and</li> <li>• if the reasonable efforts of the employer fail, the employer makes reasonable efforts to contact the employee if an equivalent position becomes available within the year as of date the qualifying need related to a public health emergency ends or when the employee's leave ends, whichever is sooner.</li> </ul>	<p>N/A</p>

<b>Employer Notice Requirements</b>	To be determined.	Post notices in conspicuous places. The Department of Labor will provide a model notice within seven days of the enactment of the Act.
<b>Miscellaneous</b>	<p>Employees may elect to substitute any accrued vacation leave, personal leave or medical or sick leave for unpaid leave.</p> <p>Employers may elect to exclude health care providers or emergency responders from application of the provisions of this Act.</p>	<p>Employers are prohibited from requiring an employee to find a replacement and from discharging an employee for requested paid sick leave.</p> <p>Employers who fail to adhere to the provisions of this Act may be subject to civil penalties.</p>
<b>TAX CREDITS</b>		
<b>Employer Tax Credits</b>	<p>Credit against the tax imposed to cover 100% of the qualified family leave and qualified sick leave wages paid by the employer.</p> <p>The credit also offsets, uncapped, the employer contribution for health insurance premiums for the employee for the period of leave.</p>	
<b>Self-Employed Individuals</b>	<p>Self-employed individuals can take as a credit against the tax imposed an amount equal to 100% of the qualified family leave equivalent amount provided the individual would be entitled to receive paid leave per the Emergency FMLA Act if they were an employee of an employer.</p> <p>A qualified family leave equivalent amount is the number of days (not to exceed 50) that the individual is unable to perform services times the lesser of 67% of the average daily self-employment income or \$200.</p> <p>The average daily self-employment income is the net earnings for the taxable year divided by 260.</p> <p>No credit will be allowed unless the individual maintains sufficient documentation to prove they are self-employed. The Secretary of the Treasury will advise what is considered sufficient documentation.</p>	<p>Self-employed individuals can take as a credit against the tax imposed for an amount equal to the qualified sick leave equivalent amount with respect to the individual provided the individual would be entitled to receive paid leave per the Paid Leave Act if they were an employee of an employer.</p> <p>A qualified sick leave equivalent amount is the number of days the individual is unable to perform multiplied by the lesser of \$200 (if leave is to care for someone else) or \$511 (if leave is to care for oneself) OR 67% of the average daily self-employment income of the individual to care for someone else or 100% if leave is for oneself.</p> <p>The average daily self-employment income is the net earnings for the taxable year divided by 260.</p> <p>No credit will be allowed unless the individual maintains sufficient documentation to prove they are self-employed. The Secretary of the Treasury will prescribe what is considered sufficient documentation.</p>
<b>MULTI-EMPLOYER BARGAINING AGREEMENTS</b>		
<b>Employment under Multi-Employer Bargaining Agreements</b>	<p>An employer signatory to a multi-employer collective bargaining agreement may fulfil its obligations under this Act by making contributions to a multiemployer fund, plan or program based on the paid leave each of its employees are entitled to.</p>	<p>An employer signatory to a multi-employer collective bargaining agreement may fulfil its obligations under this Act by making contributions to a multiemployer fund, plan or program based on the number of hours of paid sick time each of its employees are entitled to.</p>
<b>Miscellaneous</b>	N/A	<p>Nothing in the Act is to be construed to diminish the rights or benefits that an employee is entitled to under any Federal, State or local law; collective bargaining agreement; or existing employer policy.</p> <p>Employees are not entitled to unused paid sick time upon their termination, resignation, retirement or other separation from employment.</p>