

## Families First Coronavirus Response Act – Updated 3-25-2020

On March 18, 2020 the “Families First Coronavirus Response Act” became law. The law contains important provisions on paid sick leave and family and medical leave that employers need to know. The law is effective from April 2, 2020 until December 31, 2020. The requirements below do NOT carry over past December 31, 2020, unless extended by Congress. Although the law takes effect April 2, and employers are expected to comply on that date, the U.S. Department of Labor has announced a 30-day grace period for enforcement.

The law:

- Requires employers with 1 – 499 employees to provide those employees with:
  - 2 weeks of emergency paid sick leave
  - 10 weeks of paid family and medical leave
- Stabilizes unemployment insurance funding
- Creates a reimbursement program for employers’ costs for paid leave in the form of tax credits

### Emergency Paid Sick Leave

Applies to all employees of employers with 1 – 499 employees.

- Full-Time Employees: 80 hours of paid sick leave
- Part-time Employees: Paid on the average hours the employee worked over 6 months prior to taking leave.
- If employed for less than 6 months, the average number of hours per week employee would be normally scheduled.

What are allowed reasons for emergency paid sick leave?

1. Employee is subject to a federal, state, or local quarantine order related to COVID-19.
2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

*If the employee is out for reasons 1, 2 or 3 above, they are entitled to be paid at their regular rate up to a max of \$511 per day, capped at \$5,110 for the two weeks (80 hours) on sick leave.*

4. The employee is caring for an individual who is subject to an order or self-quarantine as described above.
5. The employee is caring for a son or daughter if school or childcare is closed/unavailable.
6. The employee is experiencing “any other substantially similar condition specified by HHS” (catch all).

*If the employee is out for reasons 4, 5, or 6 above, they are entitled to be paid **at 2/3 their regular rate** up to a max of \$200 per day, capped at \$2,000 for the two weeks (80 hours) on sick leave.*

Caveats to emergency paid sick leave:

- This leave is **in addition** to existing paid leave the employer offers.
- Leave can be used immediately.
- Emergency paid sick leave **does not carry over** past December 31, 2020.
- Employees cannot be required to find a replacement for their position to cover their hours out.
- Employees may use this paid sick time first before having to use other paid leave. The employer cannot require the use of other leave first.
- Employers must post notice regarding the requirements of law. The U.S. Dept. of Labor is creating a poster that employers may print. **That notice is expected to be available on March 25, 2020.**
- Employees do not have to give notice for taking the leave on the first day; however, they must give “reasonable notice” for taking the leave after day one.

Employer tax credits for emergency paid sick leave:

- Employers are entitled to refundable tax credits equal to the amount of qualified sick leave paid per quarter.
- Tax credits are applied against social security taxes, but employers are reimbursed if their qualified leave exceeds taxes they would owe.

## **Emergency Family and Medical Leave Act (EFMLA)**

Applies to all employers with 1 – 499 employees.

- A qualifying employee is one who:
  - Worked for the employer for 30 days prior to leave and has a qualifying reason.

What do they get?

- Up to 12 weeks of job-protected leave (paid after the first 10 days).

What is a qualifying reason?

The employee is unable to work (or telework) due to the need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the childcare provider of such child is unavailable, due to a public health emergency related to COVID-19 declared by a Federal, State or local authority.

How does payment work?

- During the first 10 days of leave:
  - May be unpaid.
  - An employee may elect to substitute other accrued paid time off to cover any portion of the first 10 days, but an employer cannot require it.
  - A full-time employee may elect to use emergency paid sick leave so that the first 10 days are paid, but an employer cannot require it.
- AFTER the first 10 days of leave:
  - Employee must be paid 2/3 of regular rate.
  - Part-time Employees paid on the avg. hours the employee worked over 6 months prior to taking paid sick leave. If employed for less than 6 months, the average number of hours per week employee would be normally scheduled.
  - Pay is capped at \$200 per day and \$10,000 in aggregate over the full 10 weeks.
  - Employees required to give notice "as is practical."

Employer tax credits for emergency family medical leave:

- Employers subject to requirements and entitled to refundable tax credit equal to the amount of qualified paid family and medical leave per quarter.
- Tax credits are applied against social security taxes, but employers are reimbursed if their qualified leave exceeds taxes they would owe.

### ***Note for small employers:***

***The Secretary of Labor has the authority for good cause to issue regulations to exempt small businesses with fewer than 50 employees from both forms of leave discussed above to care for a son or daughter if school or child care is closed/unavailable when the imposition of such requirement would jeopardize the viability of the business as a going concern. It is not clear how a business would pursue such an exemption as regulations have not yet been issued.***

*This document is a summary of the Families First Coronavirus Response Act for the members of Maryland Motor Truck Association. It is not legal advice. Specific legal questions should be directed to your counsel.*