

## **Families First Coronavirus Response Act: A Guide for Employers**

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On the evening of Wednesday, March 18, 2020 the President signed into law the Families First Coronavirus Response Act, which provides various forms of emergency relief to directly address the effects of the COVID-19 pandemic. The Act will impact employers specifically by requiring emergency paid sick leave and family leave for workers who may need to take time off when they or a family member are infected with the virus.

The first leave portion, the Emergency Paid Sick Leave Act, provides employees up to two weeks of sick leave paid by their employer at 100% of the employee's regular pay, up to \$511 per day. "Employees" under this Act include anyone qualified as an employee under the Fair Labor Standards Act (which includes virtually all private sector employees, whether full- or part-time, temporary, or permanent) as well as most government employees, but does not include independent contractors. Employees can take this leave if they cannot work because they have contracted COVID-19, if they are seeking treatment for symptoms of COVID-19, or if they are subjected to either a government quarantine order or a health care provider's recommendation to self-isolate. Leave is also available if the employee is caring for someone subject to a quarantine order, or if their child's school or daycare has closed and the employee must stay home to care for the child, but in these circumstances, it is paid at 2/3 of the employee's regular rate, and the maximum daily benefit is \$200. Notably, this Act does not provide leave where an employee is unable to work or telework solely because of a workplace closure.

The second leave portion, the Emergency Family and Medical Leave Expansion Act, provides an additional ten weeks of paid leave beyond the first two weeks of sick leave if an employee needs additional time off because their child's school or daycare remains closed because of COVID-19. The leave can be unpaid for the first two weeks, as they would be covered under the sick leave described above. The leave for the remaining ten weeks must be paid at no less than 2/3 of the employee's regular rate of pay up to \$200 per day. This leave is also only available to employees who have worked for their employer for at least 30 days.

These two leave provisions share some common requirements. Both Emergency Paid Sick Leave and Emergency Family and Medical Leave do not apply to employers with 500 or more employees. Neither has a similar restriction for smaller employers, but the Sick Leave portion allows the Secretary of Labor to exempt employers with fewer than 50 employees, while the Family and Medical Leave portion relaxes consequences for noncompliance for smaller employers in some instances. Both also allow employers not to provide leave to "health care providers" (employees capable of providing a diagnosis) and emergency responders. Both leaves are also subject to antiretaliation and reinstatement requirements, meaning that employers cannot retaliate against employees for taking leave under these Acts and must restore employees to their position after they return from leave (although this does not require employers to cancel pre-planned reductions or layoffs).

Employees will be eligible to take these leaves 15 days after signing, or April 2, 2020. Employers should prepare now to be able to offer these new leaves to all employees.

**Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney.**

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