



"FAMILIES FIRST CORONAVIRUS RESPONSE ACT" - ENACTED MARCH 18, 2020
KEY PROVISIONS RELATING TO EMPLOYEE LEAVES

A. EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

- a. Effective period: This Act takes effect no later than 15 days from March 18, 2020 and expires on December 31, 2020
- b. Definitions:
 - i. "Eligible employee": an employee who has been employed for at least 30 calendar days
 - ii. "Covered Employer": an employer with fewer than 500 employees
 - iii. "Qualifying Need Related to a Public Health Emergency": eligible employee is unable to work (or telework) due to a need for leave to care for a son/daughter under 18 if the child's school or place of care has been closed, or the childcare provider is unavailable due to a "public health emergency"
 1. Emergency FMLA leave under this Act applies even if the child has no medical issues
 2. Unpaid leave under current FMLA provisions still apply for "serious health conditions"
 - iv. "Public Health Emergency": emergency with respect to COVID-19 declared by a Federal, State or local authority
- c. Potential Exclusions: Secretary of Labor may issue regulations to:
 - i. Exclude certain healthcare providers and emergency responders from "eligible employee" group
 - ii. Exempt small businesses with fewer than 50 employees from the emergency FMLA requirements when imposing them would jeopardize the viability of the business
- d. Leave under Emergency FMLA Expansion Act:
 - i. Unpaid Leave: First 10 days of leave may be unpaid, but an employee may substitute any available paid leave for the unpaid leave (including emergency paid sick leave described below)
 - ii. Paid Leave: After 10 days, an employer must provide paid leave of up to 12 total weeks at 2/3 the employee's regular rate of pay, up to a maximum of \$200/day and \$10,000 total per employee
 - iii. An employer must restore an employee to an equivalent position after an emergency FMLA leave, but employers with fewer than 25 employees may be exempt under certain conditions

B. EMERGENCY PAID SICK LEAVE ACT

- a. Effective period: This Act takes effect no later than 15 days after March 18, 2020 and expired on December 31, 2020
- b. Definitions:
 - i. "Employee": an employee as defined under the FLSA shall immediately be eligible for paid sick leave under this Act, regardless of how long the employee has worked for the employer
 - ii. "Covered Employer": An employer with fewer than 500 employees
 - iii. "Health care provider" and "son/daughter" defined as set forth under the current FMLA
- c. Potential Exclusions: Secretary of Labor may issue regulations to:
 - i. Exclude certain healthcare providers and emergency responders from the "employee" group under this Act by allowing their employers to opt out
 - ii. Exempt small businesses with fewer than 50 employees from the paid sick leave requirements when imposing them of would jeopardize the ongoing viability of the business

- d. Conditions Requiring Grant of Paid Sick Leave: Covered Employer must provide paid sick leave to an employee who is unable to work (or telework) due to a need for leave because:
 - i. Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19
 - ii. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19
 - iii. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis
 - iv. Employee is caring for an individual who is subject to an order or advice described in (i) or (ii) above
 - v. Employee is caring for a son/daughter because their school or place of care has been closed, or the employee's childcare provider is unavailable, due to COVID-19
 - vi. Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor
- e. Amount and Compensation for Paid Sick Leave
 - i. Amount of paid sick leave:
 - 1. Employer must provide full-time employees with up to 80 hours of paid leave at their regular rate of pay
 - 2. Employer must provide part-time employees with paid leave based upon their average number of hours worked over a two-week period at regular rate of pay
 - 3. Paid sick leave benefits are capped:
 - a. Leave relating to employee's own conditions under (i) through (iii) above capped at \$511 per employee per day (\$5,110 total)
 - b. Leave relating to conditions under (iv) to (vi) above paid at 2/3 the employee's regular pay rate and capped at \$200 per employee per day (\$2,000 total)
 - ii. Paid sick leave under this Act will not carry over from year to year and will cease immediately when the employee's need for the paid sick leave ends
 - iii. An employee may first use paid sick leave under this Act before using other available paid leave
 - iv. An employer may not require an employee to use other employer-provided paid leave before using the emergency paid sick leave under this Act.
- f. Notice of Act Must Be Posted, and Retaliation Is Prohibited
 - i. Employers must post notice informing employees of their rights under this Act
 - ii. Employers may not discharge, discipline or in any manner discriminate against an employee who takes paid leave or files any complaint under this Act
 - iii. Nothing in Act can be used to diminish an employee's rights under existing employer policies

C. TAX CREDITS FOR PAID FAMILY LEAVE AND PAID SICK LEAVE

- a. Paid Family Leave: Employers will receive a payroll tax credit for each calendar quarter in an amount equal to 100% of qualified family leave wages that they have paid to employees not to exceed:
 - i. \$200 per day per employee; and
 - ii. \$10,000 in the aggregate for all calendar quarters
- b. Paid Sick Leave: Employers will receive a payroll tax credit for each calendar quarter in an amount equal to 100% of qualified sick leave wages that they have paid to employees not to exceed:
 - i. \$511 per day up to a maximum of 10 days per employee for sick leave relating to employee conditions (i.e. conditions (i) – (iii)); OR
 - ii. \$200 per day up to a maximum of 10 days per employee for sick leave relating to other conditions (iv) – (vi)