

Families First Coronavirus Response Act (FFCRA)

On March 18th, the President signed into law the Families First Coronavirus Response Act (FFCRA). The new law seeks to assist employees impacted by the Coronavirus (COVID-19) and applies to private employers with fewer than 500 employees. This new law includes many provisions, but among other things, the new law provides for two primary benefits – Emergency Expansion of the Family Medical Leave Act and Emergency Paid Sick Leave. The FFCRA takes effect on April 1, 2020 and is scheduled to terminate December 31, 2020.

Emergency Family and Medical Leave Expansion Act

This part of the legislation provides 12 weeks of job-protected paid leave for employees who are unable to work or telework so that they may care for children if schools are closed or their daycares are unavailable because of a public health emergency. This leave benefit covers employees who have been working for at least 30 calendar days.

Pay rates are provided as follows:

- Employers must provide paid leave *after* 10 days of unpaid leave.
- Employees may use accrued personal or sick leave during the first 10 days.
- After 10 days, employees are paid at two-thirds of their regular rate for up to 10 weeks of leave.
- Payments made to employees for this type of leave are capped at \$200 per day and \$10,000 in the aggregate.

Emergency Paid Sick Leave Act

Covered employers will be required to provide full-time employees with 10 days (80 hours) of paid sick leave when the employee cannot work or telework for circumstances related to COVID-19. Part-time employees are entitled to the number of hours of paid sick time equal to the number of hours they work, on average, over a two-week period. All employees, regardless of length of employment, are eligible for the leave.

The sick leave is intended for employees to use when they cannot work or telework because they:

- are subject to a government quarantine or isolation order related to COVID-19,
- have been advised by healthcare providers to self-quarantine due to COVID-19,
- are experiencing symptoms of COVID-19 and seeking a medical diagnosis,
- are caring for an individual subject to a quarantine order or self-quarantine (does *not* need to be a family member),
- are caring for eligible “son or daughter” under the age of 18 if schools are closed or their caregivers are unavailable due to COVID-19 precautions, or
- are experiencing substantially similar conditions as those specified by the Secretary of Health and Human Services.

Employers must compensate employees for any paid sick time they take at the higher of: (i) their regular rate of pay, (ii) the federal minimum wage, or (iii) the local minimum wage.

- Payments are capped at \$511 per day and \$5,110 in the aggregate.
- Employees absent to care for a sick family member or a child unable to attend school are compensated at two-thirds of the rate they would otherwise receive, capped at \$200 per day and \$2,000 in the aggregate.

Tax Credits

The FFCRA provides businesses with tax credits to cover certain costs of providing employees with required paid sick leave and expanded family and medical leave for reasons related to COVID-19, from April 1, 2020, through December 31, 2020.

IRS FAQs Link: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>)

Notices

On March 25th, the Department of Labor (“DOL”) released a digital version of the required notice of the Families First Coronavirus Response Act (FFCRA). Under the FFCRA, every covered employer must post a notice of the FFCRA requirements in a conspicuous place. For those that are remote, the DOL states that employers may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.

The notice only has to be provided to current employees, so it does not need to be sent to recently laid-off individuals.

Poster Link: https://consultyhn.com/wp-content/uploads/2020/03/FFCRA_Poster_WH1422_Non-Federal.pdf

DOL Link: <https://www.dol.gov/agencies/whd/pandemic>

Practical Implications

For our Associates, this law can impose significant monetary burdens. Additionally, these benefits could possibly be used broadly by employees as more states and cities consider isolation orders.

The Department of Labor (“DOL”) has the authority to exempt small businesses with fewer than 50 employees from the public health emergency leave requirements when the imposition of such requirements would jeopardize the viability of the business as a going concern.

There are many questions that continue to arise and portions of the law that are unclear. On March 24th, the DOL released an initial set of frequently asked questions (and answers) or FAQs concerning FFCRA; and followed up on March 26th with a second set of FAQs. The FAQs focus on the law’s provisions relating to Paid Sick Leave and Emergency Family and Medical Leave Act.

Link to DOL FAQs: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>