



On March 18, 2020, the Families First Coronavirus Response Act ("FFCRA") was passed. FFCRA temporarily expands the Family Medical Leave Act ("FMLA"), provides paid sick leave to those affected, expands unemployment benefits, and provides tax credits to help businesses pay for the new emergency temporary benefits.

Additional details on both programs are below but, in summary, if you are an employer with between 1 and 500 employees, you will need to pay employees who can't work due to the shelter in place mandate an additional two weeks of sick leave beyond what you already provide under state or local law. Additionally, employees who can't work because they are caring for their children whose schools are closed are entitled to 12 weeks of protected leave, 10 weeks of which the employer must pay at two thirds the employee's regular rate of pay.

Tax Credits

You will be entitled to a refundable tax credit equal to 100% of wages paid to employees for time off for reasons under the Emergency Family and/or Medical Leave Act and/or Emergency Paid Sick Leave.

The tax credit is against the employer portion of Social Security payroll taxes so yes, it seems that you will have to front the funding of these benefits to employees unless the Secretary of Labor steps in with exemptions. (See below.)

Emergency Paid Sick Leave Act

Effective Dates: April 1 - December 31, 2020

Covered Employers: Employers with 500 or fewer employees

Eligible Employees: All current employees, regardless of length of service.

Leave Entitlement: Two weeks of paid leave, equal to 80 hours for full-time employees. Part-time employees will receive a pro-rated amount equal to the average number of hours the employee works, over a two-week period. There are no accrual requirements. Emergency Paid Sick Leave wages are limited to \$511 per day up to \$5,110 total per employee.

Reasons for Leave: All of the following intended reasons must relate directly to Covid-19. Employees may take paid sick leave because they

are:

1. Subject to a federal, state, or local quarantine or isolation order;
2. Have been advised by a healthcare provider to self-quarantine;
3. Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. Caring for an individual who is subject to a quarantine or isolation order or has been advised by a healthcare provider to self-quarantine;
5. Caring for their child if the school or place of care of the child has been closed, or the childcare provider of the child is unavailable;
6. Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Existing Leave Policies: Paid sick leave under the new law is available to employees in addition to leave under an existing company policy. Employers may not require employees to first use accrued leave under existing company policy before using sick leave under the new law. Employers may not change paid sick leave policies currently in place.

Carryover: Paid sick time under the new law does not extend past December 31, 2020, and does not need to be paid out upon termination.

Employer notice: Employers must post in a conspicuous place, a notice, to be prepared or approved by the Secretary of Labor. The Secretary of Labor will provide a model notice no later than seven days after enactment and will issue guideline to assist employers in calculating the amount of paid sick time.

Emergency Family and Medical Leave Expansion Act

Effective Dates: April 1, 2020 - December 31, 2020

Reason for Leave: The employee is unable to work due to a need to care for a minor child if the child's school or place of childcare has been closed or is unavailable due to a public health emergency.

Covered Employers: Employers with 500 or fewer employees. Previously, any workplace with 50 or more employees was covered by traditional FMLA. Now, essentially all workplaces/employers are covered by Emergency FMLA.

Eligible Employees: Usual FMLA employee eligibility requirements do NOT apply. Employees who have been employed for at least 30 calendar days by the employer are eligible.

Leave Entitlement: Up to 12 weeks with the first ten days unpaid. The employee can elect to substitute accrued vacation, personal leave, or sick leave for unpaid leave.

Paid Leave After Waiting Period: The employer will provide PAID leave after the waiting period at not less than two-thirds of the employee's

regular rate of pay, and at the number of hours the employee is regularly scheduled to work. Paid leave is capped at \$200 a day or \$10,000 in aggregate, per employee.

Notification: An employee must provide notice of the leave as soon as practicable.

Job Reinstatement: Employers must reinstate employees to their same or similar position at the end of the FMLA emergency leave.

- Employers with fewer than 25 employees may be exempt from this requirement if an employee's position no longer exists following the FMLA emergency leave due to an economic downturn or other circumstances caused by this public health emergency. However, the employer must make reasonable efforts to restore the employee to an equivalent position, and, if those efforts fail, the employer must contact the employee if an equivalent position opens within a year.

Secretary of Labor Exemptions

This is what everyone has been asking about. With regard to both pieces of this new directive, the Secretary of Labor has the authority to issue regulations to exclude certain health care professionals and emergency responders, and to exempt small businesses with fewer than 50 employees when these requirements could jeopardize the validity of the business as a going concern. This is not a simple exemption to claim. Please consult with legal counsel before attempting to exempt your business!

Unemployment

The federal government has allocated \$1 Billion in grants to assist states in implement and paying for unemployment benefits. There is no additional information about this yet, but it should be forthcoming. Since California is one of the hardest hit states and has pitifully outdated unemployment benefits, I certainly hope some of that money is earmarked for California.

Next Steps

We recommend that you implement a Temporary Emergency Coronavirus Leave policy that complies with FFCRA. This law was just passed we are still trying to figure out all of the details as they are made public. We are staying on top of these new laws and will keep you informed as new information becomes available.

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