



COVID-19

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## FAMILIES FIRST CORONAVIRUS RESPONSE ACT SIGNED INTO LAW

On Wednesday evening, March 18, 2020, President Trump signed into law the second coronavirus relief bill, [HR 6201](#). This law provides several economic stimulus appropriations in light of the COVID-19 pandemic. It will be effective within 15 days. Employers will want to note the following provisions:

### FEDERAL EMERGENCY UNEMPLOYMENT PROVISIONS

The federal government will provide states up to \$1 billion in emergency administration grant funding. For unemployment commencing between enactment of the law and the end of 2020:

- » States receiving emergency administration grant funding can also receive additional federal funding for unemployment compensation, and
- » States without a 1-week waiting period will be able to receive temporary federal matching the first week of unemployment.

### MANDATORY COVERAGE OF COVID-19 TESTING AND RELATED DIAGNOSTIC SERVICES WITHOUT COST SHARING

From enactment of the law until further notice, all group health plans and individual health plans (including grandfathered plans and self-funded plans) must:

- » Cover FDA-approved products for COVID-19 testing and the administration of those products,
- » Cover "items and services furnished to an individual during health care provider office visits (in-person visits and telehealth visits), urgent care center visits, and emergency room visits that result in an order for or administration of" a COVID-19 testing product, and
- » "Not impose any cost sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical management requirements" on the above supplies and services.
  - The IRS has confirmed in Notice 2020-15 that, until further notice, test and all aspects of treatment for COVID-19 may be provided with low or no cost sharing prior to the high deductible being met without compromising compatibility with health savings accounts (HSAs).

## EMERGENCY PAID SICK LEAVE ACT AND EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

From enactment of the law until the end of 2020, certain employers will be required to provide two weeks of emergency COVID-19 paid sick leave and emergency partially-paid expanded FML to care for children under 18 due to COVID-19 closures of schools or child care providers. Note these do not pre-empt existing state and local paid sick leave requirements.

Paid leave payments may be able to be used dollar for dollar to offset employer payroll taxes. There are caps on how much the employer can offset per employee. The employer can also claim credits for certain benefits the employer pays to maintain on behalf of affected employees in relation to their leave. Should these credits exceed the employer's payroll tax liability, the excess is refundable to the employer as if they had overpaid their payroll taxes. These payroll tax credits may not be available to certain governmental employers.

Below we provide a table summarizing both of these 2020 emergency paid leave requirements.

	EMERGENCY PAID SICK LEAVE ACT	EMERGENCY FML EXPANSION ACT
<b>COVERED EMPLOYERS</b>	Employers with fewer than 500 employees, and Public employers of any size	Employers with fewer than 500 employees, and Public employers of any size
<b>COVERED EMPLOYEES</b>	Any employee (no matter how long they have been employed). Employees who are health care providers or emergency responders may be excluded.	Any employee who has been employed at least 30 calendar days. Employees who are health care providers or emergency responders may be excluded.
<b>COVERED LEAVE PURPOSES</b>	<ol style="list-style-type: none"> <li>1. When quarantined or isolated subject to federal, state, or local quarantine/isolation order;</li> <li>2. When advised by a health care provider to self-quarantine (due to concerns related to COVID-19);</li> <li>3. When experiencing symptoms of COVID-19 and seeking a medical diagnosis;</li> <li>4. When caring for an individual doing #1 or #2 (2/3 pay);</li> <li>5. When caring for a child whose school or place of care is closed due to COVID-19 (2/3 pay); or</li> <li>6. When the employee is experiencing any other substantially similar condition (2/3 pay).</li> </ol>	To care for a child under 18 of an employee if the child's school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency, defined as an emergency with respect to the coronavirus declared by a federal, state, or local authority. <i>(Note the original House bill had extended this leave for COVID-19 medical reasons of an employee or family member, but that portion was later removed. This FML expansion only covers caring for a child during school or child care closures.)</i>
<b>LEAVE DURATION</b>	Full time employees are entitled to 80 hours of paid sick leave. Part time employees are entitled to sick leave equal to the number of hours worked on average over a typical two-week period.	Up to 12 weeks of job-protected leave.

	EMERGENCY PAID SICK LEAVE ACT	EMERGENCY FML EXPANSION ACT
<b>COMPENSATION</b>	<p>Sick leave must be paid at the employee's regular rate of pay for leave used for the employee's own illness, quarantine, or care.</p> <p>Sick leave must be paid at two-thirds of the employee's regular rate if taken to care for a family member or to care for a child whose school has closed, or if the employee's childcare provider is unavailable due to the coronavirus.</p> <p>Pay is capped at \$511/day and \$5,110 total for reasons 1, 2, and 3 described above.</p> <p>Pay is capped at \$200/day and \$2,000 total for reasons 4, 5, and 6 described above.</p>	<p>No pay for first 10 days of leave (employee can, but is not required, to use any other leave available to them, including the emergency sick leave discussed to the left). Employers may not require employees to use paid leave during this period.</p> <p>After 10 days, employers must pay two thirds of the employee's regular rate of pay for the number of hours they would normally be scheduled to work, capped at \$200/day and \$10,000 total.</p>
<b>OTHER NOTES</b>	<p>Employers will be required to post a notice. A model notice will be provided.</p> <p>Employers cannot require employees to find a replacement employee to cover their missed shifts.</p> <p>Employers cannot require employees use other available paid sick time before this emergency paid leave.</p> <p>The bill reserves the right for the Secretary to exempt small businesses with fewer than 50 employees if business viability was jeopardized as a going concern.</p>	<p>The same reinstatement provisions apply as under traditional FMLA. However, restoration to position does not apply to employers with fewer than 25 employees if certain conditions are met:</p> <p>The job no longer exists because of changes affecting employment caused by an economic downturn or other operating conditions that affect employment caused by a public health emergency, subject to the following conditions:</p> <p>The employer makes reasonable efforts to return the employee to an equivalent position, and</p> <p>The employer makes efforts to contact a displaced employee if anything comes up within a year of when they would have returned to work.</p>
<b>POTENTIAL LIABILITY</b>	<p>Failure to provide mandatory sick leave is treated as a failure to pay minimum wages under the FLSA. Employers could face civil liability including fines up to \$10,000, back pay, liquidated damages, and attorney fees and costs.</p>	<p>Employers covered here but not by the rest of the FMLA (i.e. those with fewer than 50 employees) are not subject to civil action by employees (only action by the Secretary of Labor).</p>

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