

Families First Coronavirus Act – Leave Benefits

The U.S. Senate passed the Families First Coronavirus Act (“Act”) on March 18, 2020. The law is effective April 2, 2020.

The Act creates two leave benefits. The first is an emergency paid sick leave benefit which provides up to two weeks of benefits if an individual is not able to work because of their own COVID-19 related condition or caring for an impacted family member. The second is an expansion of the Family and Medical Leave Act (FMLA) to provide up to 12 weeks of FMLA benefits for employees if they are required to miss work because a child’s school is closed or caregiver is unavailable because of COVID-19.

The Act applies to employers with 500 or fewer employees. Employers can recoup the cost of benefits through offsetting payroll taxes.

A. Emergency Paid Sick Leave.

The emergency paid sick leave is a new benefit. Failures to provide the benefit are considered a violation of the Fair Labor Standards Act. It provides up to 10 days of paid sick leave for an Employee that is unable to work because an Employee:

1. Is subject to a state, federal, or local quarantine law;
- 2.. A medical provider has told the employee to self-quarantine;
3. The employee is experiencing COVID-19 symptoms and is seeking a diagnosis;
4. The employee is caring for someone subject to items 1-3 above;
5. The employee is caring for a child whose school has closed or the child care provider is unavailable because of COVID-19.

This applies to all private sector employers with less than 500 employees. The 500 employee number is a set number without caveats or exceptions. Employers can recover the cost of this benefit by offsetting payroll taxes. The Act allows the Secretary of Labor to adopt regulations exempting employers with less than 50 employees but as drafted they are not exempt under the Act.

The benefit is the employee's regular wage. If the employee is unable to work because of his own condition (Items 1-3 above) the maximum benefit is \$511 per day and \$5,110 in the aggregate. If the Employee is absent to care for someone else, the maximum benefit is 2/3rds of the employee's wage up to \$200 per day or \$2,000 in total. If the employee works less than 40 hours a week the benefit is pro-rated.

B. Emergency FMLA Expansion

This provision amends the Family and Medical Leave Act of 1993 (FMLA). FMLA definitions and requirements continue unless modified by the Act. This provision makes FMLA benefits available for up to 12 weeks if an employee is required to be off work because of a "Qualifying Need Related to a Public Health Emergency." That is defined as an employee who is unable to work (or telework) because of a need to care for a child under 18 because school is closed or the child care provider is unavailable due to COVID-19. Effectively this creates a new FMLA leave category through the end of 2020.

For purposes of this one event certain FMLA definitions are changed. An "Employee" is anyone who has worked at least 30 days (instead of 1,250 hours in a year). "Employer" is an entity with 500 or fewer employees. (This is a total number. The FMLA provisions about 50 or more employees within a geographical range are in the definition of Eligible Employees and do not apply). Employers with less than 25 employees can be exempt from the FMLA's reinstatement provision if certain conditions are met. Presumably employers will be required to continue benefits on the same terms that apply to other types of FMLA leave.

The benefit available is two-thirds of normal pay not to exceed \$200 per day or \$10,000 in aggregate. It is not available during the first two weeks of leave. The Employer can recover the cost of the benefit through payroll tax credits.