

What Employers Need to Know about the New Families First Coronavirus Response Act

By Attorney Rema Ina

On Wednesday evening, President Trump signed into law the Families First Coronavirus Response Act (FFCRA). This Act grants paid sick leave and paid Family and Medical Leave (“FMLA”) to qualifying employees during this health crisis. Here’s what you need to know:

- The law applies to employers with less than 500 employees¹.
- The law goes into effect April 2, 2020 and expires December 31, 2020.

Emergency Two-Weeks Paid Sick Leave

Under this new law, if an employee has to take leave due to the COVID-19, they may be entitled to two weeks paid leave if one of the following applies:

1. They are subject to a government quarantine or isolation order;
2. They have been advised by a health care provider to self-quarantine;
3. The employee has symptoms of COVID-19 and is seeking a medical diagnosis;
4. They are caring for an individual who is quarantined or in isolation;
5. They are caring for a child whose school or day care is closed; or
6. They are experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.

If the employee is out due to their own illness, reasons (1), (2) or (3) above, the employee is entitled to two weeks paid sick leave capped at \$511 per day (\$5,110 total). Full-time employees are entitled to 80 hours at their regular rate. Part-time employees are entitled to the number of hours they work, on average, in a two-week period.

If the employee is out because of school closings and/or they are caring for others, reasons (4), (5), or (6) above, the employee is entitled to \$200 per day (\$2,000 total).

Employers are required to allow the employee to first use the paid sick leave afforded under this law, then decide if they want to use any remaining leave accrued under the employer’s usual policy. The employer *cannot* require the employee to exhaust their regular leave accrued under

¹ There is no reason given why companies with over 500 employees are exempt. Self-employed workers can receive paid leave, assuming they pay taxes.

the employer's policy first. Also, any leave voluntarily provided by an employer before the law is effective cannot be credited against the employee's paid leave entitlement under this law.

Emergency Paid Family and Medical Leave Act

Employers are required to provide paid FMLA to employees who cannot work (or telework) due to the need to care for a minor child or when the child's school or daycare is closed due to COVID-19.

- This applies to employees who have been on the employer's payroll for at least 30 calendar days.
- The employee is entitled to a maximum of 12 weeks leave.
 - The first 10 business days (2 weeks) are unpaid. (But an employee can use any leave accrued under the employer's regular policy during this time, *and emergency paid sick leave* described above.)
 - The remaining 10 weeks are paid at 2/3 of the employee's regular rate, for the number of hours the employee would otherwise be scheduled to work (with a maximum payment of \$200 per day and \$10,000 total).
- The employee's job is protected and their position (or an equivalent position) must be restored when they return to work.
 - This requirement does not apply to employers with less than 25 employees if the employee's position no longer exists as a result of a dramatic downturn in business due to the COVID-19 outbreak and the employer makes reasonable efforts to restore the employee to an equivalent position.

Employer Tax Breaks and Exemptions

Understandably, employers are concerned as to how they are to fund this paid leave. The new law attempts to relieve this burden by providing a refundable tax credit for employers equal to 100% of the qualified leave wages they are required to pay under this law. This should be reimbursed within three months in the form of payroll tax credit. The reimbursement will also cover the employer's contribution to health insurance premiums during the leave.

In addition, the Labor Department can exempt small businesses if providing this leave would put them out of business.

Employers can also decline to give leave to health care providers, emergency responders, and other workers on the front lines of this crisis.

Shutdowns and Layoffs

This new law does not apply to employees who have been laid off due the COVID-19 outbreak. Those Ohio employees should apply for unemployment benefits here:

<http://jfs.ohio.gov/ouio/CoronavirusAndUI.stm>

The Labor Department should be issuing additional guidelines to assist employers in implementing this law before April 2. The lawyers at Gallagher Sharp are continuing to monitor this ever-changing situation and will keep you updated as the laws, policies, and issues progress.

In the meantime, do not hesitate to contact us with any questions.

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