

# THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## How the Act Affects Employers



**Note:** This information is current through March 19, 2020. Given the fast changing nature of the nation's response to the COVID-19 pandemic, please be aware that these facts will likely change and we encourage you to contact your local attorney or us at [pomsconnects@pomsassoc.com](mailto:pomsconnects@pomsassoc.com) for up-to-date information.

President Donald Trump signed the [Families First Coronavirus Response Act](#) (FFCRA) on Wednesday to expand family and medical leave as well as guarantee paid sick leave for certain U.S. workers. The bill takes effect April 2, 2020, and it will sunset on Dec. 31, 2020.

Here is a summary of key provisions of the FFCRA legislation that impact employers:

### 1. EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

The FFCRA amends the FMLA to allow U.S. workers to take up to 12 weeks of job-protected leave if the employee is unable to work or telework due to a need to care for a child under 18 years of age because that child's school or place of care has closed or the child's child care provider is unavailable due to a public health emergency with respect to COVID-19.

- ▶ **Expanded FMLA Coverage and Eligibility** – Private sector employers with fewer than 500 workers, along with governmental entities, will have to provide up to 12 weeks of FMLA leave for employees who have been on the job for at least 30 days, and who are unable to work or telework because they have to care for a minor child if the child's school or place of care has been closed, or if the child care provider of that child is unavailable due to a coronavirus emergency.
- ▶ **Reasons for Emergency Leave** – Any individual employed by the employer for at least 30 days (before the first day of leave) may take up to **12 weeks of job-protected leave** to allow an employee, who is unable to work or telework, to care for the employee's child (under 18 years of age) if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency. This is now the **only** qualifying need for Emergency FMLA.
- ▶ **Paid Leave** – Under the FFCRA, the first 10 days of Emergency FMLA may be unpaid. During this 10-day period, an employee may elect to substitute any accrued paid leave (like vacation or sick leave) to cover some or all of the 10-day unpaid period, but the employer cannot mandate that the employee use any PTO during this time. After the 10-day period, the employer generally must pay full-time employees **at two-thirds the employee's regular rate** for the number of hours the employee would otherwise be normally scheduled. The Act limits this pay entitlement to \$200 per day and \$10,000 in the aggregate per employee.
- ▶ **Calculating Paid Leave for Non-Full Time Employees** – Employees who work a part-time or an irregular schedule are entitled to be paid leave based on the average number of hours the employee worked for the six months prior to taking Emergency FMLA. Employees who have worked for less than six months prior to leave are entitled to the employee's reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.
- ▶ **Job Restoration** – Generally, the employee on leave must be restored to his or her prior position; however, this requirement does not apply to employers with fewer than 25 employees if the position held by the employee on leave no longer exists due to economic conditions or other changes in the employer's operating conditions caused by the coronavirus pandemic, and the employer makes reasonable efforts to restore the employee to an equivalent position for up to a year following the employee's leave.
- ▶ **Social Security Payroll Tax** – Wages required to be paid under the emergency family leave provisions will not be subject to the 6.2% social security payroll tax typically paid by employers on employees' wages.
- ▶ **Effective Date and Expiration** – This program will become effective on April 2, 2020 and will remain in effect until December 31, 2020.

## 2. PUBLIC HEALTH EMERGENCY PAID SICK LEAVE ACT

Private sector employers with fewer than 500 workers (and governmental entities) will have to provide employees who cannot work or telework with paid sick time off if the employee is:

1. is subject to a coronavirus quarantine or isolation order;
2. has been advised by a health care provider to self-quarantine due to coronavirus concerns;
3. is experiencing symptoms of coronavirus and is seeking a medical diagnosis;
4. is caring for an individual described in (i) or (ii) above;
5. is caring for a child whose school or place of care is closed, or the child care provider of the child is unavailable, due to coronavirus precautions; or
6. is experiencing any other substantially similar condition specified by HHS in consultation with the Treasury and Labor Departments.

- ▶ **Exception for Health Care Providers and Emergency Responders** – Employers who are healthcare providers or emergency responders may elect to exclude their employees from the public health emergency leave provisions of the bill.
- ▶ **Leave Benefits for Employees** – Employers must offer two weeks (10 days) of paid sick leave for COVID-19-related reasons (existing leave offered can count toward the 10 days). If the sick leave is for an employee who is sick or seeking a diagnosis, the benefit must replace all of the employee's wages up to a maximum benefit of \$511 per day.
  - ▶ The paid sick leave credit offsets 100% of employer costs for providing mandated paid sick leave. The credit also offsets, uncapped, the employer contribution for health insurance premiums for the employee for the period of leave. Contact a tax professional for more details.
  - ▶ Leave taken to care for children whose schools or daycares have closed is paid at two-thirds the employee's regular rate of pay, with a maximum of \$200 per day or \$10,000 total.
  - ▶ Employers cannot force an employee to use up their vacation or other sick time before receiving this benefit.
  - ▶ Employers will be prohibited from (i) requiring workers to find replacements to cover their hours during time off; or (ii) discharging or discriminating against workers for requesting paid sick leave or filing a complaint against the employer related to such.
  - ▶ There is a ten-day waiting period before this benefit applies. Employees can use existing sick or vacation time to cover these days.
- ▶ **Carryover and Interaction with Other Paid Leave** – This paid sick leave will not carry over to the following year and may be in addition to any paid sick leave currently provided by employers.
- ▶ **Employer Posting Requirements** – Employers will have to post a notice containing information regarding the emergency sick leave provisions; the Labor Department is to create a model notice no later than 7 days after the Act is enacted.
- ▶ **Social Security Payroll Tax** – Wages required to be paid under the emergency family leave provisions will not be subject to the 6.2% social security payroll tax typically paid by employers on employees' wages.
- ▶ **Effective Date and Expiration** – This program will become effective April 2, 2020 and will remain in effect until December 31, 2020.

## 3. EMPLOYER TAX CREDITS FOR PAID SICK AND PAID FAMILY AND MEDICAL LEAVE

This section of the FFCRA provides a series of refundable tax credits for employers who are required to provide the Emergency Paid Sick Leave and Emergency Paid Family and Medical Leave described above. These tax credits are allowed against the employer portion of Social Security taxes. While this limits application of the tax credit, employers will be reimbursed if their costs for qualified sick leave or qualified family leave wages exceed the taxes they would owe. Please contact a payroll tax professional for further information about the FFCRA tax credit provisions.

Disclaimer – This briefing has been prepared by Poms & Associates Insurance Brokers, LLC to provide information on recent developments of interest to our clients. It is not intended to offer legal or regulatory advice for a particular situation. Events are rapidly developing during this national state of emergency, and best practices are constantly changing. We recommend that individuals and entities carefully monitor and follow health directives of the WHO and CDC, along with federal, state and local authorities and contact their attorney for more in-depth information regarding any employee action.