



COMPLIANCE BULLETIN

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

On March 18, 2020, the President signed into law the Families First Coronavirus Response Act. While largely the same as the House bill passed on March 13, the final version of the legislation differs in several material respects from the original legislation, including permitting exemptions for employers with fewer than 50 employees, and providing some limits on the expansion of paid FMLA benefits. In its final form, the act will take effect on 4/1/20, and apply to leave taken between 4/1/20 and 12/31/20.

- **Expansion of Family Medical Leave Act (FMLA) benefits:**

- The bill includes an expansion of the FMLA to include absences necessitated by “a public health emergency” during the 2020 calendar year;
- Changes the eligibility rules to include employees who have been employed for only 30 days (instead of requiring 12 months and 1,250 hours of service);
- Applies to all employers with fewer than 500 employees, but does provide for the Secretary of Labor to issue regulations to exempt some small businesses with fewer than 50 employees and to exclude certain health care providers and emergency responders;
- A qualifying employee may take up to 12 weeks of paid, job-protected leave if the employee is unable to work or telework due to a need to care for a son or daughter under age 18 whose school or place of care has been closed.
- The first 10 days of coronavirus-related leave are unpaid, although employees may opt to use paid time off to cover such leave (use of paid time cannot be required by the employer). Leave after 10 days is required to be paid at 2/3 of the employee’s normal rate of pay when the employee meets the school or place of care provision mentioned previously; and
- Limits employee pay to \$200 per day and \$10,000 in aggregate per employee; and
- Provides for payment of employees employed under a multiemployer collective bargaining agreement.
- Calculating Pay for Non-Full Time Employees – Employees who work a part-time or irregular schedule are entitled to be paid 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.

- **Emergency Paid Sick Leave:**

- This Act now allows an eligible employee to take paid sick leave because the employee is:
 1. subject to a federal, state or local quarantine or isolation order related to COVID-19;

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2. advised by a health care provider to self-quarantine due to COVID-19 concerns
 3. experiencing COVID-19 symptoms and seeking medical diagnosis;
 4. caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
 5. caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
 6. experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
- Employers with fewer than 500 employees must provide full-time employees (regardless of the employee's duration of employment prior to leave) with 80 hours of paid sick leave at the employee's regular rate (for reasons 1-3 above), or two-thirds the employee's regular rate (for reasons 4, 5, or 6 listed above).
 - The Act also puts limits on paid sick leave. Specifically, paid sick leave wages are limited to \$511 per day up to \$5,110 total per employee for their own use and to \$200 per day up to \$2,000 total to care for others and any other substantially similar condition.
 - Part time employees who have worked for the employer for less than 6 months are entitled to the typical number of hours they work in a two week period. Those who have worked for the employer for more than six months should average the number of hours for six months prior to taking leave.
 - Requires that paid sick leave for coronavirus be made available immediately; and
 - Bars discrimination against an employee for the use of such paid sick leave.
- **Expansion of Unemployment Benefits**
 - Makes a billion-dollar emergency fund available to unemployment programs in states affected by the emergency; and
 - Requires states who want to access the fund to ease work search and waiting period requirements for unemployed applicants.

The bill provides a series of refundable tax credits for employers who are required to provide the Emergency Paid Sick Leave and the Emergency Paid Family and Medical Leave described above. Subject to certain caps, employers may be able to recover 100 percent of qualified sick leave wages and 100 percent of qualified family leave wages. Innovative is tracking the progress of this new law and will provide updates as they become available. For any questions, contact the Innovative team.

As required by the Families First Coronavirus Response Act, the DOL has issued a model notice which is required to be posted by all employers. To assist employers in complying with their posting obligations, the DOL has issued FAQs regarding the posting. You can find this FAQ sheet as well as the [required notice poster here](#).

For more information on all aspects of Family First Coronavirus Response Act or any bills we are watching, please consult Innovative Benefit Planning. This is an evolving situation that we will continue to closely monitor and keep you updated as events happen.