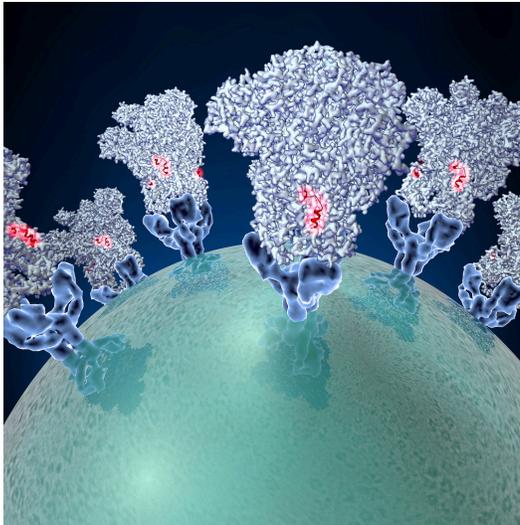


Families First Coronavirus Response Act



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Published March 22, 2020

On March 18, 2020, Congress passed and President Trump signed the Families First Coronavirus Response Act.

The Act, among other benefits, provides many employees in the US with up to two weeks of paid sick leave and up to 12 weeks of protected and partially paid Family and Medical Leave Act leave for absences from work to:

- recover from or isolate due to coronavirus;
- quarantine or isolate due to a federal, state or local Order related to COVID-19;
- similar reasons as determined by the Secretary of Health and Human Services;
- care for family members who are recovering from or isolating due to coronavirus; or
- care for children under 18 due to school or day care closures.

The Act also provides federal funding for an additional 26 weeks of state Unemployment Insurance (UI) benefits in those states that experience a 10 percent increase in unemployment over 2019 levels.

A summary of the relevant portions of the 112 page bill and what the benefits mean for employers and their employees is as follows:

Emergency Paid Sick Leave

The Act requires employers with fewer than 500 employees and government employers to provide employees either:

- Two weeks of paid sick leave, paid at the employee's regular rate of pay, for employees who are unable to work, including remote work, due to quarantining or seeking a diagnosis or preventive care for coronavirus;

- Two weeks of paid sick leave paid at two-thirds of the employee's regular rate of pay for an employee who is unable to work, including remote work, to care for a family member to quarantine or seek a diagnosis or preventive care for coronavirus, OR to care for a child under the age of 18 whose school has closed, or child care provider is unavailable, due to coronavirus.

Full-time employees are entitled to 2 weeks (80 hours) of paid sick leave and part-time employees are entitled to the number of hours they work in a typical two-week period. If an employer already provides paid sick leave, sick leave under the Act is in addition to existing leave, i.e., the leave under this Act is to be taken before sick leave under the employer's existing policies. An employer may not require an employee to use other paid leave, e.g., vacation, prior to use of emergency paid sick leave. There is no minimum period of employment required for an employee to receive the benefits of the Act. The amount of paid sick leave is capped at \$511 per day or \$5,111 in total for time off due to an employee's own health condition and \$200 per day and \$2,000 in total for time off to care for a family member or child. Employers are not required to pay out sick leave under the Act upon termination. Employers are prohibited from discharging, disciplining or discriminating against employees using paid sick leave under the Act.

For employees working under a Collective Bargaining Agreement, the bill requires that employers pay into the union Trust plan so that employees are provided with the paid sick leave.

Employers are to fund the paid sick leave and receive a tax credit for the full amount of the benefits paid as discussed below.

Expansion of Emergency Family and Medical Leave

Provides employees of employers with fewer than 500 employees and government employers, who have been on the job for at least 30 days, with the right take up to 12 weeks of job-protected leave under the Family and Medical Leave Act to be used for any of the following reasons:

- To care for a child of an employee who is under the age of 18 if the child's school or place of care has been closed, or the child-care provider is unavailable, due to a coronavirus.

Paid FMLA begins after an employee uses the two weeks of emergency paid sick leave (or unpaid leave if the employee does not qualify for emergency paid sick leave) and is paid at no less than two-thirds of the employee's usual pay. The amount paid to an employee is capped at \$200 per day or \$10,000 in total. As with the emergency paid sick leave, employers pay the FMLA wages and are reimbursed through a tax credit. There is a limited exception to paid FMLA leave for employers of less than 50 who can prove complying with the law will threaten the economic viability of their business.

Employers of employees working under a Collective Bargaining Agreement are required to pay into the union Trust plan to fund the paid FMLA benefits.

Tax Credit

The Act provides employers with a tax credit for amounts paid to employees as emergency paid sick leave or paid FMLA leave as follows:

- A tax credit equal to 100 percent of qualified paid sick leave or paid FMLA wages paid by an employer for each calendar quarter. The tax credit is allowed against the employer portion of Social Security and other employment related taxes.
- If the credit exceeds the employer's total liability for the specified employment taxes, the employer can receive the excess credit as a refund. To prevent a double benefit, no deduction is allowed for the amount of the credit. In addition, the credit received must be treated as income to the employer. Employers may elect to not have the credit apply.

Limits of Benefits

Emergency paid sick and FMLA leave provided under the Act only applies to employees who are on leave for the specified reasons (diagnosis and quarantine of the employee or a family member; similar reasons as determined by the Secretary of Health and Human Services; or need to care for a child due to school or day care closure). These benefits are not available to employees who are off work due to closures for economic reasons related to coronavirus. However, those employees may be eligible for Unemployment Insurance benefits, with no seven day waiting period.

Notice

Employers are required to post a “model notice” regarding the benefits of the Act in a prominent location visible to employees within seven days. The Secretary of Labor is to prepare this model notice.

Effective Date and Duration of Act

The Act takes effect not later than 15 days after the date of bill’s enactment and expires on December 31, 2020. The Act gives the Secretary of the Treasury broad authority to issue regulations and guidance. We expect the regulations and guidance will clarify procedures and questions and which remain after enactment.

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