



## **FAMILIES FIRST CORONAVIRUS RESPONSE ACT SUMMARY (as of March 23, 2020)**

On March 18, the President signed into law, the Families First Coronavirus Response Act, which establishes paid sick leave under a new law known as the Emergency Paid Sick Leave Act, and extends protections for Family Medical Leave under the Emergency Family and Medical Leave Expansion Act. The provisions of both Acts apply to all employers with between 1 and 500 employees. Both Acts are effective April 2, and will remain in effect until December 31, 2020. Both of these new laws impose significant additional obligations on affected employers, and are summarized below.

### **EMERGENCY PAID SICK LEAVE ACT**

The Emergency Paid Sick Leave Act (“EPSLA”) requires covered employers to provide 80 hours of paid sick leave to full-time employees, and paid sick leave to part-time employees based on the average number of hours the part-time employee works.

#### ***Entitlement to Paid Sick Leave***

Employers must provide paid sick leave time to an employee unable to work or telework because:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
2. The employee has been told by a health care provider to self-quarantine because of COVID-19 concerns.
3. The employee is experiencing symptoms of COVID-19 and seeking medical diagnosis.
4. The employee is caring for an individual subject to quarantine or isolation order, or who has been instructed by a health care provider to self-quarantine.
5. The employee is 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 because of COVID-19 precautions.
6. The employee is 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.

Business closures or shutdowns are not covered reasons for paid sick leave.

#### ***Eligibility and Pay***

Employees are entitled to use paid sick leave regardless of length of employment. Employers are required to provide 80 hours of paid sick leave to full time employees at the employee’s regular rate. Total paid leave to full-time employees is capped at \$511 per day, \$5,110 in the aggregate per employee for leave reasons 1 through 3, above. Employees taking leave for reasons 4 through 6, above, are entitled to two-thirds of their regular rate of pay. Total paid leave is capped at \$200

per day and \$2,000 in the aggregate per employee for reasons 4 through 6. Part-time employees are entitled to prorated full or two-third their regular rate of pay based on average hours of work. Employers must permit employees to use the new paid sick time before any other leave provided by the employer. Employers are required, at the request of the employee, to pay a full time employee for the 80 hours of mandated emergency paid sick leave instead of the initial 10 days of unpaid Emergency Family and Medical Leave Expansion Act leave.

Covered employers qualify for a dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the EPSLA. Credits are also extended to amounts paid or incurred to maintain health insurance coverage.

### ***Small Employer Exception***

Small businesses with fewer than 50 employees may apply to the Department of Labor for exemption from compliance with the paid sick leave requirements when the “imposition of [paid sick leave requirements] would jeopardize the viability of the business as a going concern.”

### ***Prohibitions and Penalties***

Employers are prohibited from discriminating or retaliating against an employee for taking paid sick leave or for attempting to assert sick leave rights. Penalties and enforcements under Sections 16 and 17 of the Fair Labor Standards Act, 29 USC §216 and §217, will be imposed against any employer who violates the Emergency Paid Sick Leave Act.

Employers are required to comply with any other federal, state or local leave laws to which they are subject and existing employer policies. The EPSLA does not supersede or preempt any other law.

## **EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT**

### ***Employees Covered by EFMLEA***

The Emergency Family And Medical Leave Expansion Act (“EFMLEA”) applies to employees who have been employed for at least 30 days. It does not impose any hours-worked requirement. Employees must provide notice as soon as practicable if the need for leave is foreseeable.

### ***Events Triggering EFMLEA Leave***

The EFMLEA provides for a leave of absence for an eligible employee who is unable to work or telework because the employee must care for his or her child (including biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person taking the place of a parent) under 18 years of age whose school or place of care has been closed, or whose care provider is unavailable due to a COVID-19-related emergency. Quarantine does not trigger the EFMLEA, though traditional FMLA rights and rights under the Emergency Paid Sick Leave Act may be available to an employee under quarantine or with a family member under quarantine.

### ***Benefits Under EFMLEA Leave***

The EFMLEA provides up to 12 weeks of leave for an eligible employee. The initial 10 days of leave are unpaid, but an employee may use any accrued paid sick leave, PTO, or vacation time during these 10 days. If leave continues beyond 10 days, it must be paid. An employee on leave beyond 10 days must be paid two-thirds of his or her normal rate of pay for the number of hours the employee normally would be scheduled.

### ***Restoration to Position Upon Return from Leave***

Employers with 25 or more employees must return an employee returning from EFMLEA leave to the same position or an equivalent position. Employers with fewer than 25 employees must return an employee returning from EFMLEA leave to the same position, unless that position no longer exists due to operational changes caused by the COVID-19 emergency. In that case, the employer must endeavor to return the employee to an equivalent position. If none exists, the employer must contact the employee if an equivalent position becomes available within one year.

### ***Multiemployer CBAs***

Employers party to a multiemployer Collective Bargaining Agreement fulfill their obligations under the EFMLEA by making contributions to a multiemployer fund, plan, or program, provided that the fund, plan, or program enables employees to secure pay based on hours worked.

### ***USDOL Regulations May Exempt Certain Employers***

The U.S. Department of Labor (“USDOL”) will have the authority to exempt employers with fewer than 50 employees from having to provide leave under the EFMLEA if doing so would jeopardize the viability of the employer’s business. Employers must request such an exemption from the USDOL.

## **CONCLUSION**

These new laws provide greatly expanded coverage to covered employees which are intended to be paid for by tax credits to their employers. However, these laws are still a work in progress and no implementing regulations are in place. So there could yet be significant changes in the application of these laws.