

Families First Coronavirus Response Act: Expanding Sick and Family Leave Employer Requirements

On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act (the “Act”) which requires many employers to provide expanded paid sick leave and paid family and medical leave to its employees. The Act is in response to the 2019 novel coronavirus (COVID-19) and is intended to provide relief to employees who cannot work in connection with COVID-19. The Act becomes effective on April 1, 2020 and applies to leave taken between April 1, 2020 and December 31, 2020.

Covered Employers:

The Act applies to private employers with fewer than 500 employees. However, the Department of Labor (DOL) is working on addressing an exemption for businesses with fewer than 50 employees. The DOL states that “Small businesses with fewer than 50 employees **may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.” At this time, it appears as though this is the only portion of this Act that would be exempt for businesses with fewer than 50 employees. Of course, we will be looking for future announcements on this front since this will impact many of our clients. In the meantime, businesses with fewer than 50 employees should prepare documentation why they meet the exemption, as that will likely be required by the DOL. The Secretary of Labor may also exclude certain health care providers or emergency responders as covered employees.**

Emergency Paid Sick Leave Entitlement:

Full-time employees of a covered employer are entitled to up to 80 hours (2 weeks) of paid sick leave for a qualifying reason.

Part-time employees of a covered employer are entitled to up to the number of hours the employee would work on average during a 2-week period as paid sick leave for a qualifying reason. If a part-time employee’s schedule varies during a 2-week period, you may use a 6-month average to calculate the average daily hours.

Employees may use this emergency sick leave immediately (as of April 1, 2020) and are not required to use other available paid or unpaid leave before using the emergency sick leave. This emergency paid sick leave is in addition to what employers already have in place. After the first day of use, employers may require the employee to follow a reasonable notice process to continue to receive paid sick leave.

An employee is qualified for the emergency paid sick leave, if the employee is unable to work, or telework, because the employee:

1. Is under a federal, state or local quarantine or isolation order due to COVID-19.
2. Has been advised by a health care provider to self-quarantine related to COVID-19.
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis.
4. Is caring for a person subject to an order under item (1) above or self-quarantine under item (2) above.

5. Is caring for a child whose school or place of care is closed related to COVID-19.
6. Is experiencing substantially similar conditions as determined by the Secretary of Health and Human Services.

Employees taking leave for qualifying reasons 1, 2 and 3 above are entitled to 100% of their regular rate of pay, or the applicable minimum wage, whichever is higher, up to a maximum of \$511 per day, or \$5,110 in total (covering two weeks).

Employees taking leave for qualifying reasons 4, 5 and 6 above are entitled to 2/3rds of their regular rate or 2/3rds of the applicable minimum wage, whichever is higher, up to a maximum of \$200 per day, or \$2,000 in total (covering two weeks). Employees are entitled to a maximum of 80 hours, so if they go out on leave for reasons 4, 5, or 6, above, and then becomes ill with the virus or are quarantined, they are not entitled to another 2 weeks of leave under this Act. However, the employee may be eligible for additional leave under the employer's other paid and unpaid leave policies.

Employers are required to include overtime in the calculation if the employee would have normally worked overtime during his/her leave. For example, if an employee would normally work 45 hours a week, during his/her 2-week leave you would pay 40 regular hours plus 5 hours of overtime for week 1 and 35 regular hours in week 2 (totaling 80 hours). However, keep in mind the daily and total maximums noted above. Restaurants, who pay their employees a rate lower than the federal minimum wage plus tips, must pay their employees at least the federal \$7.25 per hour minimum wage for this leave, unless the employee's regular rate with tips is typically higher. In addition, employees who normally receive a commission or a piece rate must have those items calculated into their pay rate.

There is a new legal poster related to the FFCRA that employers must post on their legal poster bulletin board for all employees to see. You can find that poster on the DOL website:

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Emergency Paid Family and Medical Leave Entitlement:

Only employees who have been employed at least thirty (30) days by a covered employer are entitled to the emergency paid family and medical leave related to COVID-19. Full-time employees are entitled to up to ten (10) paid weeks and part-time employees are entitled to up to the number of paid hours the employee would work on average during a 10-week period.

The total amount of family and medical leave permitted is twelve (12) weeks during a 12-month period; however, the first two weeks are unpaid. Employees may use other accrued paid leave during the first 2-week unpaid period.

An employee is qualified for the emergency paid family and medical leave, if the employee is unable to work, or telework, because the employee is caring for a child whose school or place of care is closed related to COVID-19.

Employees taking emergency paid family and medical leave are entitled to 2/3rds of their regular rate or 2/3rds of the applicable minimum wage, whichever is higher, up to a maximum of \$200 per day, or \$10,000 in total (covering ten weeks).

Where the need for leave is foreseeable, employees must provide notice to the employer as soon as practical.

How the Treasury Department is Helping Employers:

Although we are still awaiting specific guidance, the Treasury Department has announced that employers will receive a 100% reimbursement for sick leave paid to its employees in accordance with the Families First Coronavirus Response Act. They add that 1) they are providing for an immediate dollar-for-dollar offset against payroll taxes, 2) employers face no payroll tax liability on the paid sick leave, and 3) health insurance costs are also included in the credit. If an employer is eligible for a tax refund due to the dollar-for-dollar offset against payroll taxes, the IRS will send the refund as quickly as possible.

As we understand it now, once you begin paying your employees for sick leave under this Act (as soon as 4/1/20), you will be allowed to offset your 4/15/20 941 tax payment for the covered period. If that 941 tax payment is not enough to cover your cost of the paid leave, you can seek an expedited advance from the IRS by using a not-yet-available IRS claim form. The IRS claims that advance payments will be processed in 2 weeks or less. In other words, you will process your payroll as usual, taking all the applicable taxes. We recommend a new payroll item (FFCRA sick leave) to accurately track this sick leave and the related taxes. For example, if the amount of FFCRA sick leave equals \$5,000 for the pay period ending 4/10/20 and your total 941 taxes for that pay amount to \$25,000, you will make your 941 payment in the amount of \$20,000. If your FFCRA sick leave equals \$10,000 and your total 941 taxes equal \$8,000, you can use the entire \$8,000 towards your payment of sick leave and apply for the remaining \$2,000 in an accelerated advance.

Corporations, estates, trusts or any type of unincorporated business entity, and individuals are all getting relief from form filing and tax payment deadline requirements, whether or not they have been directly impacted by COVID-19. Federal and PA state and local tax filing and payment deadlines have been extended to 7/15/20. This extension also allows IRA contributions through 7/15/20 to be applied to your 2019 tax return. It's important to note, however, other than the 941 payments related to the FFCRA sick leave, all other payroll taxes are due on their normal deadlines.

Pennsylvania Unemployment:

The Pennsylvania Department of Labor and Industry (L&I) has stated that PA contributory businesses that are forced to temporarily close or lay off workers due to the coronavirus will be granted a Relief From Charges and their rate will not be increased due to these laid-off employees' claims.

L&I recommends that if employees have paid time off available to them, they should take that time first (if the business continues to operate during this pandemic) since that compensation pays more than unemployment benefits do and is available immediately, whereas unemployment benefits may be delayed. Employees who cannot report to work because they have COVID-19 or are told to self-quarantine and have no paid leave available to them, but their employer is still in operation, are eligible to file for unemployment. Again, this will not affect the employer's rate. Employees cannot receive unemployment benefits and paid leave at the same time and may be required to return the overpayment of unemployment benefits if that occurs.

We will continue to monitor legislation related to COVID-19 to assist our clients with the various business and legal issues or opportunities which may arise.

This correspondence should not be construed as tax or legal advice or tax or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult a tax advisor or lawyer concerning your own situation and legal questions.