

COVID-19 UPDATE: NEW PAID LEAVE BENEFITS FOR EMPLOYEES



COVID-19 Update: New Paid Leave Benefits for Employees

Attention: We are hosting a free webinar on this new law tomorrow, Friday, March 20th from 12-12:30pm. Register [here](#).

Yesterday afternoon, March 18, 2020, President Trump signed the Families First Coronavirus Response Act (“FFCRA”), which will go into effect within the next 14 days. Among other provisions pertaining to food assistance and COVID-19 testing, the FFCRA creates two new forms of paid leave benefits for employees impacted by the COVID-19 pandemic: 1) emergency paid sick leave, and 2) expansion of the Family Medical Leave Act.

All employers with fewer than 500 employees will be required to provide and pay for the cost of these benefits, and employers will be reimbursed through tax credits. Employers’ obligations will be as follows:

Paid Sick Leave

Employers must provide **all** employees (regardless of tenure) with up to 10 days of paid sick leave if they are unable to work or telework for any of the following reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. The employee is advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual who is under a federal, state, or local quarantine or isolation order or who has been advised by a health care provider to self-quarantine;
5. The employee is caring for a child whose school has been closed, or whose child provider is unavailable, due to 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.

This leave entitlement is in addition to any existing paid leave policies employers have in place, and employees are entitled to use FFCRA paid sick leave before using any other paid leave (e.g., vacation, PTO, California paid sick time).

If an employee uses COVID-19 paid sick leave for the first three reasons identified above, the employee **must be paid their regular rate of pay, up to a maximum of \$511 per day** or \$5,110 in the aggregate. If an employee uses COVID-19 paid sick leave for reasons 4, 5, or 6 above, they **must be paid at least 2/3 of their regular rate of pay, up to a maximum of \$200 per day** or \$2,000 in the aggregate.

The Secretary of Labor has the authority to issue regulations exempting small businesses with fewer than 50 employees when the imposition would jeopardize the viability of the business as a going concern, but no such exemption has been issued as of yet. Employers of **health care providers** and **emergency responders** are permitted to exclude employees from this law.

FFCRA paid sick leave is set to expire on **December 31, 2020**, and unused paid sick leave will not carry over from year to year, nor be paid out upon termination of employment.

The Secretary of Labor is tasked with publishing a model notice regarding this temporary paid sick leave law within 7 days of the FFCRA being enacted, which employers will be required to post in the workplace.

Expansion of Family Medical Leave Act

Also through **December 31, 2020**, the Family and Medical Leave Act ("FMLA") will be temporary expanded to allow employees leave of up to 12 weeks to be used for a "qualifying need" related to an emergency with respect to COVID-19, as declared by federal, state, or local authorities.

A "qualifying need" occurs when employees are unable to work or telework due to the need to care for their child whose school has been closed, or whose child provider is unavailable, due to COVID-19

concerns. Employees are eligible for the expanded FMLA leave if they have been employed **for at least 30 calendar days**.

FMLA leave is generally unpaid. If an employee takes leave under this temporary provision, however, **the first 2 weeks of leave may be unpaid**, and the employer must **provide paid leave for up to 10 weeks thereafter**. An employee may (but cannot be required to) use accrued vacation or sick leave during the initial unpaid two weeks, and thereafter, **must be paid at least 2/3 of the employee's regular rate of pay, up to a maximum of \$200 per day** or \$10,000 in the aggregate.

Employees are entitled to reinstatement to the same or equivalent position upon exhausting their FMLA leave under this provision, except **no reinstatement is required if the employer has fewer than 25 employees**, and the following conditions are met (1) the employee's no longer exists due to economic conditions or other operating conditions caused by COVID-19, (2) the employer has reasonably attempted to restore the employee to an equivalent position, and (3) if reasonable efforts fail, the employer must make reasonable efforts for **one year** to contact the employee if an equivalent position becomes available.

The Secretary of Labor has the authority to issue regulations exempting small businesses with fewer than 50 employees when the imposition would jeopardize the viability of the business as a going concern, but no such exemption has been issued as of yet. Employers of **health care providers** and **emergency responders** are permitted to exclude employees from this law.

Employers should be mindful that the unique eligibility requirements, and the paid component of, this expanded FMLA provision **do not impact** the existing provisions of FMLA, and are specific to address the COVID-19 pandemic.

Hoge Fenton's Employment Law team is standing by to help you retain your employees and serve your customers during the COVID-19 pandemic. Please do not hesitate to contact any of us below, and **click here** to join us for tomorrow's webinar.



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