

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Right now, more than ever, it is very important that you as business owners and leaders equip yourself with as much information as possible. One of the key things to come down from the federal government in the last few days is the Families First Coronavirus Response Act. We are providing you with the attached synopsis for your immediate review, please read it in order to ensure you and your company are protected. This will be one of those governmental mandates that will be tough on you as a business owner, and, it is the right thing to do at this point.

This Act will go into effect no later than April 2, 2020 and run through December 31, 2020. And, there are a number of key points in the Act, the biggest thing is that the Family and Medical Leave Act of 1993 (“FMLA”) is being expanded to include companies with fewer than 500 employees. If you have been exempt from the impact of the FMLA on your company, this information is very important for you to digest. More details include the following:

Summary

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (“FFCRA”) into law. Beginning no later than April 2, 2020, and through December 31, 2020, the FFCRA mandates family medical and sick leave payments for individuals affected by Coronavirus (“COVID-19”) to be paid by employers with fewer than 500 employees. For family medical leave, the determination of the number of employees is based on the Family and Medical Leave Act of 1993 (“FMLA”) rules. For sick leave, the determination of the number of employees is based on the rules of the Fair Labor Standards Act of 1938 (“FLSA”).

There are three key parts of the law that relate to employee benefit programs: COVID-19 testing, paid FMLA, and paid sick leave for individuals affected by COVID-19. These payments are funded with a refundable tax credit applied to the employer share of FICA and Medicare taxes due in the quarter in which the payments are made.

COVID-19 TESTING

The act requires all employer-sponsored health plans to cover costs and services related to COVID-19 testing without cost sharing, prior authorization, or other medical management requirements. Costs covered include diagnostic products, associated administration fees, and services furnished to an employee at providers’ offices, urgent care centers, and emergency rooms.

EMERGENCY FMLA

The FMLA has been temporarily expanded for employers with fewer than 500 employees to allow eligible employees up to 10 weeks of paid FMLA leave with a 10-day “waiting period” if they are unable to work or telework as a result of caring for a child whose school is closed or whose childcare provider is unavailable due to COVID-19. During the 10-day waiting period, the employee is permitted to receive accrued sick or other leave, including the paid sick leave provided under this legislation. The 10 weeks of leave will be paid at two-thirds the employee’s regular rate of compensation for the employee’s expected hours, capped at a maximum payment of \$200/day and a total payment of \$10,000.

EMERGENCY PAID SICK LEAVE

In addition, the Emergency Paid Sick Leave Act requires private employers with fewer than 500 employees and governments with at least one employee to provide paid sick leave to any employee unable to work or telework if the employee:

- Is subject to federal, state, or local quarantine or isolation related to COVID-19;
- Is self-quarantined as advised by a healthcare provider because of COVID-19 related concerns;
- Has COVID-19 symptoms and is awaiting medical diagnosis;



- Is caring for a child at home because a school or childcare facility is closed, or a childcare provider is unavailable due to COVID-19;
- Is caring for an individual that is under federal, state, or local quarantine related to COVID-19 or self-quarantined as advised by a healthcare provider because of COVID-19 symptoms; or,
- Has other symptoms outlined by the Secretary of Health and Human Services, in consultation with the Department of the Treasury and the Department of Labor.

Eligible full-time employees who are quarantined, self-quarantined or experiencing symptoms and seeking a diagnosis are entitled to 80 hours at their regular rate of pay. If the employee is caring for a family member, they are paid two-thirds their regular rate of pay. Eligible part-time employees are entitled to the equivalent rate of pay for an average number of hours during a two-week period. Payments are limited to \$511/day and \$5,110 in total for quarantine, self-quarantine and those experiencing symptoms and awaiting diagnosis, and \$200/day and \$2,000 total for caring for others. An employer may not require an employee to use available sick leave before these payments are made.

By March 25, 2020, the Department of Labor is required to issue a model notice for employers to post in a conspicuous place informing employees of this paid sick leave.

EMPLOYMENT TAX CREDITS

Employers (other than governments) providing emergency FMLA or paid sick leave under the Emergency Paid Sick Leave Act are entitled to refundable employment tax credits equal to 100 percent of these wages paid. Additional credits apply for employer payments of health care expenses for these individuals during this time and employer Medicare taxes paid on such amounts. These payments to individuals are not subject to the employer share of FICA and Medicare. The employer share of FICA and Medicare tax deposits can be reduced by these credits without fear of the failure to deposit penalty applying. Amounts for which the credit is claimed are nondeductible.

Self-employed individuals are entitled to a tax credit for income and self-employment taxes paid for an amount equal to equivalent family medical or sick leave if they would be entitled to amounts as an employee. The equivalent amount is determined based on an individual's wages for self-employment purposes, but in no event will the amount be greater than what the individual would have been entitled to as an employee. This credit can be claimed by reducing estimated tax payments. The maximum amount of credit for self-employed persons is reduced by any such payments paid by an employer to the self-employed person.

What Should Employers Do Now?

COVID-19 TESTING IN ALL GROUP HEALTH PLANS

- All employers should contact their carriers or TPAs to immediately implement coverage of COVID-19 testing with no cost-sharing, no prior authorization requirement, and no medical management requirements.
- Understand the extent to which plans must cover other items and services furnished related to COVID-19 testing.

EMERGENCY FMLA

- Review and modify FMLA documentation to reflect temporary FFCRA requirements.
- Work with FMLA administration vendor to coordinate compliance with the FFCRA.
- Communicate to Work with payroll department or vendor to establish procedures for calculating and paying out paid leave after first two weeks.
- employees the new FMLA benefits for COVID-19 related leaves.



EMERGENCY PAID SICK LEAVE

- Work with a leave administration vendor to coordinate compliance with FFCRA.
- Obtain the DOL model notice (when available) and post, as appropriate.
- Communicate with and educate employees on eligibility for paid sick leave.
- Work with the payroll department or vendor to establish procedures for calculating and paying out paid sick leave.

EMPLOYMENT TAX CREDITS

- Work with the payroll department or vendor to track payments under expanded FMLA or paid sick leave.
- Work with the payroll tax vendor to calculate and claim tax credits through tax deposits and payroll tax filings.

