

>> COVID-19 ALERT UPDATE

Revisions to Proposed Family First Coronavirus Response Act: Potential Relief for Employers

THE BOTTOM LINE

- >> The amended version of the FFCRA is a sign of potential relief to employers anticipating having to navigate the obligations of the bill during the uncertain times of this pandemic.
- >> It restricts the circumstances under which employees qualify for expanded partially-paid FMLA and for paid sick leave, and adds compensation caps to limit the amount of pay employees will be entitled to receive while on paid leave.
- >> Employers should continue to pay close attention to changes to the FFCRA as it works its way through Congress and toward enactment.

For a comprehensive review of the Family First Coronavirus Response Act please consult our previous alert, **“The Families First Coronavirus Response Act: What Employers Need to Know”**

UPDATE

The Senate confirmed this version of the FFCRA and the President signed it into law on March 18, 2020. It goes into effect **April 1, 2020**.

Of importance, the amended version of the bill tightens the definitions of when employees can take coronavirus-related leave or sick time and places caps on the amounts employees will be paid, substantially lowering the cost to employers. The Act also provides employers with tax credits that align with the amounts of paid leave and sick time paid to employees under the Act. The tax credits reimburse employers for wages and certain benefits provided during the qualifying leave, up to the applicable caps. If the amount of the credit exceeds the credit limit, any excess is treated as an overpayment and is refunded to the employer. As further guidance is issued, we will provide timely updates.

On March 16, the House of Representatives passed an amended version of the Families First Coronavirus Response Act (the Act or FFCRA), legislation that was originally passed on March 14.

The amended version of the bill tightens the definitions of when employees can take leave for reasons related to the coronavirus and places caps on the amounts due to employees taking paid leave, substantially lowering the cost to employers.

Below is a summary of the key changes to the Act from the version previously passed by the House.

TEMPORARY EXPANSION OF FMLA LEAVE

Under the original version of the Act, the first 14 days of leave employees took were to be unpaid before the paid leave began. The amended version has changed this to unpaid leave for the first 10 days.

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The previous version of the legislation provided Family and Medical Leave Act (FMLA) leave for any of the following public health emergency-related reasons (Public Health Emergency Leave):

- 1) To comply with a health care provider or public official's recommendation or order that the employee's presence at work would jeopardize the health of others due to the employee's exposure to coronavirus or exhibition of coronavirus symptoms.
- 2) To care for a covered family member whose presence in the community has been deemed by a health care provider or public official to jeopardize the health of others due to the family member's exposure to coronavirus or exhibition of coronavirus symptoms.
- 3) To care for the employee's child because their school or place of care has been closed or their childcare provider is unavailable due to coronavirus.

The new version narrows the circumstances under which employees are eligible for leave and those who are unable to work because they need to care for their child, who is under 18 years of age, if the child's school or place of care has been closed or their child care provider is unavailable due to coronavirus.

This means that the new version of the Act does not cover employees who are told to stay home by a doctor because of their own exposure to, or because they are suffering from, coronavirus, or to care for a family member who is the subject of such a recommendation. These employees, however, may still be eligible to take traditional unpaid, job-protected FMLA leave.

The new version of the bill also scales back the pay that employees will receive if they take leave. The original bill provided that employees would receive 2/3 of their regular pay, without a cap. The amended bill, however, which appears to apply only to employees taking FMLA to care for children home from school due to the coronavirus, imposes a cap on compensation of up to \$200 per day and \$10,000 in the aggregate for the 10 weeks of paid leave (after the initial 10 days of unpaid FMLA leave, for which they may choose to apply paid sick time or PTO).

PAID SICK LEAVE

Under the amended version of the Act, an employee may take paid sick leave for the following reasons:

- 1) The employee is subject to a federal, state or local quarantine or isolation order related to coronavirus;
- 2) The employee has been advised by a health care provider to self-

quarantine due to concerns related to coronavirus;

- 3) The employee is experiencing symptoms of coronavirus and seeking a medical diagnosis;
- 4) The employee is caring for an individual who:
 - a) Is subject to a federal, state or local quarantine or isolation order related to coronavirus; or
 - b) Has been advised by a health care provider to self-quarantine due to concerns related to coronavirus;
- 5) The employee is caring for their child if the child's school or place of care has been closed, or the child care provider of the child is unavailable, due to coronavirus precautions; or
- 6) The employee is experiencing any 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 list is substantially similar to the prior version of the bill, but removes the right to take paid sick time in compliance with a health care provider or public health official's *recommendation* that the employee's presence would jeopardize others' health because of the employee's exposure to or symptoms of the coronavirus.

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The new version of the Act also implements caps on the compensation employees can receive while out on paid sick leave. Those amounts are capped at:

- >> \$511 per day and \$5,110 in the aggregate when the employee is subject to quarantine, has been advised to self-quarantine, or is experiencing coronavirus symptoms and is seeking medical diagnosis (reasons 1-3 above); or
- >> \$200 per day and \$2,000 in the aggregate if the employee is caring for someone who is subject to quarantine or has been advised to self-quarantine, caring for a child whose school or child care is closed or unavailable due to coronavirus, or experiencing a substantially similar condition, as specified by regulations (reasons 4-6 above).

TAX CREDIT

As in the [initial version of the Act](#), employers will be able to take a credit for the compensation paid to employees taking public health emergency leave under the FMLA or paid sick time under the FFCRA against the Federal Insurance Contributions Act (FICA) taxes they pay. The initial version of the Act limited the credit that employers could take. The amended Act maintains those credit limits, but aligns the amount of paid leave with those credit limits. Employers that had serious reservations about the new law, as initially proposed, may want to review the revised bill since it appears that they will no longer be required to pay more in wages than they can take as a credit.

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