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**An Employer's Guide to the Families First Coronavirus Response Act ("FFCRA")**

On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act ("FFCRA"). The new law takes effect on April 1, 2020 and contains important provisions regarding paid sick leave and paid family leave for individuals affected by the COVID-19 outbreak. What follows is a brief summary of what employers need to know now about these new paid leave mandates:

**Emergency Paid Sick Leave Act**

**Eligibility Requirements:** All employees of employers with less than 500 employees are eligible for paid sick leave if they are unable to work (including telework) for one of the following qualifying reasons:

1. the employee is subject to local, state, or federal quarantine or isolation due to COVID-19;
2. the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 (i.e. a self-imposed quarantine without medical advice doesn't qualify);
3. the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. the employee is caring for an individual who is subject to quarantine/isolation or has been advised to self-quarantine;
5. the employee is caring for a son or daughter whose school has been closed or place of childcare is unavailable due to COVID-19 precautions; or
6. the employee is experiencing any other substantially similar condition as may be specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor.

**Length of Service Requirement:** There is no length of employment requirement for eligibility for paid sick leave.

**Amount of Paid Sick Leave:** Full-time employees are entitled to take eighty (80) hours of paid sick leave. Part-time employees are entitled to receive the equivalent of the number of hours that they work, on average, over a two (2) week period. Paid sick leave must be used in calendar year 2020. For the purposes of the FFCRA, a full-time employee is an employee normally scheduled to work forty (40) or more hours per week.

**Sick Leave Offered Before Effective Date:** Employees who were provided paid sick leave for one of the qualifying reasons listed above (e.g. Rhode Island paid sick and safe leave) before the effective date of the Emergency Paid Sick Leave Act cannot be denied paid sick leave under the Act. The Act imposes a new leave requirement on employers.

**Rate of Pay for Paid Sick Leave:** Paid sick leave used for the qualifying reasons listed in paragraphs 1 – 3 above is paid at the employee’s regular rate of pay or the minimum wage, whichever is greater. Paid sick leave used for the qualifying reasons listed in paragraphs 4 – 6 above is paid at two-thirds of the employee’s regular rate of pay or the minimum wage, whichever is greater.

**Caps on Paid Sick Leave:** If paid sick leave is used for one of the qualifying reasons listed in paragraphs 1 – 3 above, the amount of paid sick leave is capped at \$511 per day and \$5,110 in total. If paid sick leave is used for one of the qualifying reasons listed in paragraphs 4 – 6 above, the amount of paid sick leave is capped at \$200 per day and \$2,000 in total.

**Intermittent Paid Sick Leave:** Unless an employee is teleworking, paid sick leave must be taken in full-day increments. Once an employee begins taking paid sick leave for one of the qualifying reasons listed in paragraphs 1 – 4 and 6 above, they must continue to take paid sick leave until they have either used the full amount of paid sick leave or no longer have a qualifying reason for leave.

**Effect on Employer’s Existing Leave / PTO Policies:** Employers may not require eligible employees to use other paid leave before using paid sick leave under the Act. Paid sick leave under the Act is in addition to any sick leave or PTO currently provided by the employer.

**Employee Notice Requirements:** Employers may not require employees to provide advance notice prior to the first workday upon which they take paid sick leave under the Act. However, employers may require employees to follow reasonable notice procedures to continue receiving paid sick leave after the first workday.

**Employer Posting Requirement:** Employers must display in a conspicuous location a notice advising employees of their rights and the employer’s responsibilities under the Act. The model notice may be found here:

[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

**No Retaliation:** Employers may not discharge, discipline, or discriminate against an employee who takes paid sick leave under the Act.

**Exemption for Small Businesses:** Employers with less than fifty (50) employees may apply to the Department of Labor for an exemption if providing child-care-related paid sick leave would jeopardize the viability of the employer’s business. The process for applying for this exemption will be addressed in forthcoming regulations.

## **Emergency Family and Medical Leave Expansion Act**

**Eligibility Requirements:** All employees of employers with less than 500 employees are eligible for paid family leave if they are unable to work (including telework) for one of the following qualifying reasons:

1. The employee's need to care for a child under the age of 18 whose school or place of childcare has been closed; or
2. The employee's childcare provider is unavailable due to a public health emergency. A "public health emergency" is an emergency with respect to COVID-19 declared by a local, state, or federal governmental authority.

**Length of Service Requirement:** Unlike eligibility for the paid sick leave benefit, the employee must be employed for at least thirty (30) days to become eligible for paid family leave.

**Usual FMLA Eligibility Requirements Inapplicable:** The usual employee eligibility requirements for family leave under the Family and Medical Leave Act (FMLA) do not apply. The employee does not have to have been employed for a year, worked for 1,250 hours, and work in a location where there are 50 employees within a 75-mile radius to be eligible.

**Amount of Paid Family Leave:** Eligible employees are entitled to take twelve (12) weeks of family leave during a twelve (12) month period. The first ten (10) days of family leave are unpaid. After the first ten (10) days, the employee is entitled to paid leave. FFCRA paid sick leave can be used to cover the first ten (10) days of unpaid family leave.

**Effect on Employee's Existing FMLA Entitlement:** Employees who work for FMLA covered employers are entitled to take a total of twelve (12) workweeks for FMLA during a twelve (12) month period. If an employee already has taken some, but not all, of their FMLA leave entitlement, they can take the remaining portion of their FMLA leave as paid family leave. Employees who have already exhausted their FMLA leave entitlement may not take additional leave for paid family leave.

**Rate of Pay for Paid Family Leave:** Paid family leave is paid at a rate not less than two-thirds of the employee's regular rate of pay based on the number of hours the employee is regularly scheduled to work. If the employee is normally scheduled to work more than forty (40) hours per week, overtime hours must be included. However, pay that the employee receives does not need to include a premium for overtime hours.

**Cap on Paid Family Leave:** The amount of paid family leave is capped at \$200 a day and \$10,000 in total.

**Intermittent Family Leave:** Employees may take paid family leave intermittently while their child's school or place of care is closed or the child's childcare provider is unavailable due to COVID-19 reasons. However, intermittent family leave is permitted only when the employer and employee agree upon such a schedule. The Department of Labor encourages employers and employees to collaborate to achieve flexibility.

**Effect on Employer's Existing Leave / PTO Policies:** The employee can elect to substitute their pre-existing accrued vacation time, sick leave, personal leave, or PTO for the first ten (10) days of

unpaid family leave. After the first ten (10) days of unpaid leave, employers may require employees to take concurrently existing leave that, under the employer's policies, would be available to the employee under the circumstances.

**Concurrent Use of Paid Sick Leave and Pre-existing Leave:** An employee cannot simultaneously take paid sick leave under the FFCRA and pre-existing paid leave provided by the employer unless the employer agrees to allow the employee to supplement the amount received for FFCRA paid sick leave with pre-existing leave up to the employee's normal earnings.

**Employee Notice and Documentation Requirements:** If the employee's need for paid family leave is foreseeable, the employee must provide notice of the leave as soon as practicable. Employers may require employees to provide additional documentation in support of their family leave request (e.g. notice of closure or unavailability of child's school or place of childcare).

**Limited Job-Protection:** For employers with twenty-five (25) or more employees, an employee returning from family leave is entitled to reinstatement in the same or an equivalent position. For employers with fewer than twenty-five (25) employees, the employee is entitled to reinstatement unless the position does not exist due to economic conditions or other changes in operating conditions caused by the public health emergency. For at least a year, the employer must make reasonable efforts to restore the employee to an equivalent position.

**Exemption for Small Businesses:** Employers with less than fifty (50) employees may apply to the Department of Labor for an exemption if providing child-care-related family leave would jeopardize the viability of the employer's business. The process for applying for this exemption will be addressed in forthcoming regulations.

### **Miscellaneous Compliance Issues**

**Unemployment Insurance:** Employees may not collect unemployment insurance benefits during the time that they are receiving paid sick leave and/or paid family leave under the FFCRA. Employees may, however, be entitled to partial unemployment benefits in accordance with state eligibility requirements.

**Benefits Continuation:** If an employee takes paid sick leave or paid family leave under the FFCRA, they are entitled to continuation of their group health coverage on the same terms as if the employee continued to work. Employees must continue to make any normal employee contributions to the cost of their group health coverage.