

EMPLOYMENT LAW LEGAL ALERT

WHAT YOUR BUSINESS NEEDS TO KNOW ABOUT THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

President Trump signed the law on March 18, 2020; however, it does not go into effect until April 1, 2020, which gives employers some time to make appropriate policy changes and communicate those to their employees.

The emergency paid-leave provisions of the Act apply to businesses with fewer than 500 employees, but there may be some exceptions available for small businesses and companies that employ health care workers. These new provisions relating to paid leave expire on December 31, 2020.

How does the legislation work?

The legislation updates the FMLA to provide workers with up to 12 weeks of job-protected leave when they can't work—either onsite or remotely—because their minor son's or daughter's school or childcare service is closed due to a public health emergency. The FMLA defines "son or daughter" as a biological, adopted or foster child; a stepchild; a legal ward; or a child of a person taking the place of a parent.

The first 10 days of leave can be unpaid. An employee can opt to substitute accrued vacation, personal or sick leave, but an employer may not require an employee to do so.

For the other 10 weeks, eligible workers must receive two-thirds of their regular rate of pay, which will be capped at \$200 a day (and \$10,000 total).

Paid sick leave under the Act provides that many employers will have to provide up to 80 hours of paid-sick-leave benefits if an employee:

1. Has been ordered by the government to quarantine or isolate because of COVID-19.
2. Has been advised by a health care provider to self-quarantine because of COVID-19.
3. Has symptoms of COVID-19 and is seeking a medical diagnosis.
4. Is caring for someone who is subject to a government quarantine or isolation order or has been advised by a health care provider to quarantine or self-isolate.
5. Needs to care for a son or daughter whose school or childcare service is closed due to COVID-19 precautions.
6. Is experiencing substantially similar conditions as specified by the secretary of health and human

services, in consultation with the secretaries of labor and treasury.

Paid sick leave must be paid at the employee's regular rate of pay, or minimum wage, whichever is greater, for leave taken for reasons 1-3 above (up to \$511 per day). Employees taking leave for reasons 4-6 may be compensated at two-thirds their regular rate of pay or two-thirds minimum wage, whichever is greater (up to \$200 per day).

Part-time employees are eligible to take the number of hours they would normally work during a two-week period.

Employers cannot do any of the following:

- Require an employee to use other paid leave before using the paid sick time provided in the Act.
- Require an employee to find a replacement to cover his or her scheduled work hours.
- Retaliate against any employee who takes leave in accordance with the Act.
- Retaliate against an employee who files a complaint or participates in a proceeding related to the Act—including a proceeding that seeks to enforce the Act.

The Act is a lot for most employers to digest in just a few short days. The Act does provide that an employer can require its employees to follow reasonable notice procedures to continue receiving the benefit after the first workday that an employee receives paid sick time under the Act. Accordingly, employers are encouraged to adopt policies to implement the Act and a notice procedure ASAP.

This summary is general in nature and should not be construed as legal advice or as creating an attorney-client relationship. Consultation with legal counsel is recommended for specific situations.