



Paid Sick Leave and Emergency Family and Medical Leave Related to COVID-19

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On March 18, 2020, the President signed the Families First Coronavirus Response Act.¹ Among its provisions, the act includes two temporary types of paid leave for employees impacted by the declared COVID-19 public health emergency. The act will take effect on April 1, 2020, and is effective through December 31, 2020.

PAID SICK LEAVE

The act provides for up to 80 hours of paid sick leave for an employee affected by the public health emergency.

The paid sick leave may be used for certain categories of **self-care** related to COVID-19, if the employee is subject to a quarantine or isolation order, has been advised by a health care provider to self-quarantine, or is seeking a diagnosis for symptoms. If used for these purposes, the employee receives the **regular rate of pay**, capped at \$511 per day and \$5,110 total.

The paid sick leave may also be used **to care for a family member** who is subject to a quarantine or isolation order or has been advised to self-quarantine, or to care for a child whose school has closed or whose child care provider is unavailable, due to COVID-19 precautions. If used for these purposes, the employee receives **two-thirds of the regular rate of pay**, capped at \$200 per day and \$2,000 total.

A full-time employee may use up to 80 hours of paid sick leave, for these purposes, between April 1, 2020, and December 31, 2020. A part-time employee may use the number of hours the employee works, on average, over a two-week period. If a part-time employee has a varying schedule to the extent that the hours the employee would have worked may not be determined with certainty, the employer must determine the average number of hours worked in the six months before the employee takes the paid sick leave, including hours for which the employee took any leave.

If an employee is unable to work or telework in these circumstances, an employee may first use the paid sick leave provided in the act, before using other paid leave provided by an employer. The paid sick leave does not diminish the rights or benefits an employee is entitled to under an existing employer policy.

EMERGENCY FAMILY AND MEDICAL LEAVE

The act creates a new basis for which leave under the federal Family and Medical Leave Act (FMLA) may be used, and requires the emergency FMLA leave used for this purpose to be paid, in part.

Under the FMLA, an eligible employee may take up to 12 weeks of job-protected leave for certain qualifying reasons. The act adds a new qualifying reason that allows emergency FMLA leave to be used **for a lack of child care**, if a child's school has closed or a child care provider is unavailable, due to COVID-19 precautions, and the employee is unable to work or telework.

The emergency FMLA for this purpose may be used for up to the full 12 weeks of the job-protected FMLA leave, between April 1, 2020, and December 31, 2020. The first two weeks are unpaid leave, followed by up to 10 weeks of paid leave. An eligible employee may choose to use two weeks of other paid leave

¹ P.L. 116-127.

provided by an employer, including the paid sick leave described above, for the initial two weeks of the emergency FMLA leave.

For the paid portion of the emergency FMLA leave, the employee receives **two-thirds of the regular rate of pay**, capped at \$200 per day and \$10,000 total, for the number of hours that the employee is normally scheduled to work over that period. If a part-time employee has a varying schedule to the extent that the hours the employee would have worked may not be determined with certainty, the employer must determine the average number of hours worked in the six months before the employee takes the paid sick leave, including hours for which the employee took any leave.

COVERED EMPLOYEES AND EMPLOYERS

The paid sick leave and emergency FMLA requirements apply to all private employers with fewer than 500 employees, to all state and local public employers, and to certain federal employers.

The emergency FMLA is available to an employee who has been employed for at least 30 days. The paid sick leave is available to an employee regardless of how long the employee has been employed.

In addition, the U.S. Department of Labor may exclude employees who are health care providers or emergency responders. The department may also exempt employers with fewer than 50 employees from providing the paid sick leave, or the emergency FMLA, for a lack of child care, if the requirements would jeopardize the viability of the business. Future federal regulations are expected to address these exclusions.

TAX CREDITS FOR PAID SICK LEAVE AND EMERGENCY FMLA

The act provides a refundable payroll tax credit for private employers to fully match the amount of paid sick leave and paid emergency FMLA.

For preliminary guidance on implementation of the payroll tax credit for the paid sick leave and emergency FMLA, see the Internal Revenue Service (IRS) news release [IR-2020-57](#).

ADDITIONAL RESOURCES

The U.S. Department of Labor has issued the following guidance on the temporary paid sick leave and emergency FMLA:

- For employees: [Families First Coronavirus Response Act: Employee Paid Leave Rights](#).
- For employers: [Families First Coronavirus Response Act: Employer Paid Leave Requirements](#).
- FAQ: [Families First Coronavirus Response Act: Questions and Answers](#).

For resources and information on other wage and hour issues in responding to COVID-19, see the U.S. Department of Labor webpage on [COVID-19 and the American Workplace](#).

For tax announcements and information, see the IRS webpage on [Coronavirus Tax Relief](#).

Further federal guidance and regulations are expected.