

The Families First Coronavirus Response Act and the Potential Impact on Small and Mid-sized Businesses

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INTRODUCTION

On March 14, 2020, the House of Representatives passed H.R. 6201, the Families First Coronavirus Response Act (“FFCRA”), after negotiation with the U.S. Secretary of Treasury. The Senate adopted the bill on March 18, 2020, which the President signed the same day. Under the terms of the legislation, the Act **becomes effective no later than April 2, 2020.**

The new legislation provides substantial new obligations to all employers of fewer than 500 employees. Although the final legislation is substantially similar to the initial version passed by the House, there are some differences that all employers should consider.

The Emergency Paid Sick Leave Act and the Emergency Family Medical Leave Expansion Act, provide for paid, job-protected leave of absences that are related to the COVID-19 outbreak. In a nutshell, Employers must now provide two weeks fully-paid leave to all employees in connection with a coronavirus-related absence. After that, employees are entitled to two-thirds pay for Family and Medical Leave, up to 12 weeks, for the duration of the outbreak-related absence. The FFCRA provides refundable tax credits to employers for payment of the qualified sick and family leave. The new rules will take effect within 15 days of the enactment of the FFCRA, and will expire on December 31, 2020.

THE EMERGENCY PAID SICK LEAVE ACT – SECTION 5102

This section requires employers with fewer than 500 employees to provide employees two weeks of paid sick leave—paid at the employee’s regular pay rate (capped at \$511 per day)—in order for the employee to quarantine or seek a diagnosis or preventive care for coronavirus; or paid at two-thirds of the employee’s regular pay rate (or the applicable minimum wage, if greater), capped at \$200 per day, to care for a family member for such purposes or to care for a child whose school has closed, or child care provider is unavailable, due to the coronavirus. The FFCRA lists the six categories of events that will allow an employee to take sick leave, if the employee is not able to work or *telework*:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19

2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2)
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable due to COVID-19 precautions
6. The employee is experiencing any other 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

The FFCRA provides the following:

- Full-time employees are entitled to two weeks (80 hours) and part-time employees are entitled to the typical number of hours that they work in a typical two-week period. Paid sick time under this section does not carry over from one year to the next.
- For employers who already provide paid sick leave, the new leave shall be in addition to such paid sick leave.
- The Act ensures employees who work under a multi-employer collective agreement and whose employers pay into a multi-employer plan are provided with leave.

Benefits under the FFCRA supplement and are in addition to any existing paid leave benefits. Thus, employees may first take advantage of benefits under the FFCRA before accessing benefits otherwise available to them.

AMENDMENTS TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993 – SECTION 5102

This section provides employees of employers with fewer than 500 employees, who have been on the job for at least 30 days, with the right take up to 12 weeks of job-protected paid leave under the Family and Medical Leave Act to be used only to care for an employee's child under 18 years of age if the child's school or place of care has been closed, or the child-care provider is unavailable, due to a coronavirus.

Congress specifically modified the House version by removing the provisions that would have allowed leave for employees who sought leave in order to adhere to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus or to care for an at-risk family member who is adhering to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus.

Under the Act signed by the President, the first 10 days for which an employee takes leave may consist of unpaid leave, although an employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave, including sick leave under the FFCRA, for unpaid leave under the statute. Leave pursuant to FMLA is to be paid at the rate of two-thirds of the employee's regular pay rate (or the applicable minimum wage, if greater), capped at \$200 per day and \$10,000 per employee in the

aggregate. Also, the FFCRA relaxes provisions concerning restoration of positions for employees on leave for employers with fewer than 25 employees.

PAYROLL CREDITS FOR REQUIRED PAID SICK LEAVE AND PAID FAMILY LEAVE – SECTIONS 7001-7004

While employers will be required to front the expense for paid sick leave and family leave, the FFCRA provides a refundable tax credit equal to 100 percent of qualified paid sick leave wages paid by an employer for each calendar quarter. For amounts paid to employees, the amount of qualified sick leave wages taken into account for each employee is capped at \$511 per day. For amounts paid to employees caring for a family member or for a child whose school or place of care has been closed, the amount of qualified sick leave wages taken into account for each employee is capped at \$200 per day.

The credit also applies for certain self-employed individuals. In general, self-employed individuals will be entitled to a refundable tax credit equal to 100 percent of the qualified sick leave equivalent amount for eligible self-employed individuals who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation with respect to coronavirus. For those caring for a family member or child whose school has been closed due to coronavirus, the refundable tax credit is equal to 67 percent of the qualified sick leave equivalent.

Similarly, under Sections 7003 and 7004 of the FFCRA, employers shall be entitled to a refundable tax credit equal to 100 percent of qualified family leave wages paid by the employer for each calendar quarter. With respect to family leave, however, the credit is capped at \$200 per day or \$10,000 for all calendar quarters. For self-employed individuals, the credit is capped at the lesser of \$200 per day or the average daily self-employment income for the taxable year per day.

CONCLUSION

The FFCRA creates new rights and benefits intended to allow employees to seek medical attention and treatment if they fear they are ill, even if their employers did not otherwise offer sick leave. Likewise, the Act provides FMLA relief to the parents of school-aged children for when the schools are closed and childcare is unavailable. The FFCRA supplements existing state and federal law and the benefits it provides are in addition to any existing rights and obligations imposed by statute. While this legislation places new responsibilities on employers to provide sick leave and family and medical leave in connection with the COVID-19 virus, it also promises federal relief in the form of tax credits for those payments.

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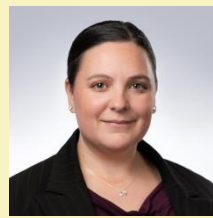
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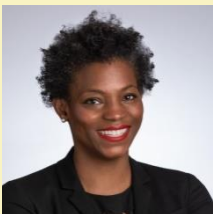
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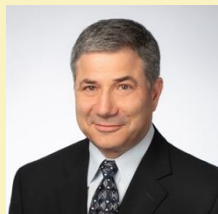
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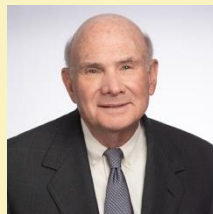
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