

Legal Development: Families First Coronavirus Response Act
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On March 18, 2020, President Trump signed into law H.R. 6201, the Families First Coronavirus Response Act (the "Act"). This new law takes effect on April 2, 2020 and will continue through December 31, 2020.

All employers (both public and private) employing less than 500 employees are covered by the Act. The pertinent employment provisions of the Act are as follows:

Emergency Family and Medical Leave

- Employees who have worked for an employer for at least 30 days, and are unable to work or telework because their minor child's school or daycare is closed due to a public health emergency are eligible for up to 12 weeks of protected Emergency Family and Medical Leave ("EFML").¹
- The first 10 days of EFML are unpaid. However, an employee may elect to use any other available paid leave (including emergency paid sick leave, discussed below). Unlike the FMLA, employers may not require an employee to use paid leave during this 10-day period.
- After 10 days, an employer is required to pay employees at least 2/3 of their regular pay during the leave, up to a maximum of \$200/day and \$10,000 total. (Part-time employees and those with irregular schedules are paid based on the average number of hours the employee worked during the prior six months—if the employee worked less than six months, the calculation is based on the average number of hours the employee normally would have been scheduled to work).
- Employers are entitled to a tax credit (credited against employer Social Security taxes) in an amount equal to any EFML compensation they are required to pay.
- Health care providers, emergency responders and employers with fewer than 50 employees may apply for a hardship exemption (the Department of Labor has been charged with creating rules to address the details of this).
- The traditional FMLA job restoration requirements apply to employers of 25 or more. For employers of less than 25 employees, the job reinstatement provisions may not apply *if* the following conditions are met: (i) the employee takes EFMLA; (ii) the position the employee held when the leave started does not exist due to the economic conditions or other changes in the employer's operations that (a) affect employment and (b) are caused by a public health emergency during the period of leave; (iv) the employer makes reasonable efforts to restore the employee to an equivalent position, with equivalent pay, benefits and other terms; and (v) if reasonable efforts to restore to an equivalent position fail, the employer makes reasonable efforts to contact the employee if an equivalent position becomes available during a defined 12-month period.

¹ Note, this is a bit of a misnomer: the original bill provided for leave for certain COVID-19 medical reasons as well; however, this "medical" leave was removed in a later draft of the bill).

Emergency Paid Sick Leave

- Emergency paid sick leave must be made available to employees regardless of length of employment, *in addition to* any other paid leave to which an employee is already entitled (including Washington paid sick leave). Employers cannot require employees to use other employer-provided paid leave before taking emergency paid sick leave.
- Employees are eligible for emergency paid sick leave if they:
 1. Are subject to a local, federal, or quarantine or isolation order related to COVID-19;
 2. Have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 3. Are experiencing symptoms of COVID-19 and are seeking a medical diagnosis;
 4. Are caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
 5. Are caring for a minor child whose school has been closed, or whose child care provider is unavailable, due to a public health emergency related to COVID-19; or
 6. Are 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.
- Full time employees are eligible for up to 80 hours of paid sick leave; paid sick leave for part-time employees or employees who work irregular schedules is based on the average number of hours the employee worked for the six months prior to taking paid sick leave. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work over a two-week period.
- Employees must be paid their regular rate, up to a maximum of \$511 per day and \$5,100 total for qualifying reasons (1) – (3) above. Employees must be paid 2/3 of their regular rate, up to a maximum of \$200 per day and \$2,000 total for qualifying reasons (4) – (6) above.
- Emergency sick leave does not carry over.
- Employers are entitled to a tax credit (credited against employer Social Security taxes) in an amount equal to any emergency sick leave compensation they are required to pay.
- As with the EFML, health care providers, emergency responders and employers with fewer than 50 employees may apply for a hardship exemption (the details of which are to be determined through the rulemaking process).
- Employers must post a notice regarding the requirements of the sick leave requirements within 15 days. The DOL is required to make a model notice publicly available no later than seven days after enactment of the new law.

These are novel and rapidly-developing/changing times and issues. Employers are encouraged to consult legal counsel as they implement the temporary measures required by the Act. Insee Best attorneys are available to assist as needed.