

March 19, 2020

FAMILIES FIRST CORONAVIRUS RESPONSE ACT BECOMES LAW

On March 18, 2020, just hours after clearing a Senate vote, President Trump signed the Families First Coronavirus Response Act into law. The key provisions related to health insurance plans and employer leave programs are explained below.

COVERAGE FOR COVID-19 TESTING

The law requires all private individual and group health insurance providers, including self-funded employer groups and grandfathered health plans, to cover COVID-19 diagnostic testing at no cost to the insured. Coverage, without any cost sharing, is also required for any office visit, telehealth visit, urgent care or emergency room visit that triggers the need for testing. Said differently, this means that no plan can charge copayments, coinsurance or deductibles for diagnostic care related to COVID-19. Prior authorization and medical management requirements are also not permitted.

EMERGENCY SICK LEAVE

Covered employers with fewer than 500 employees will have to provide employees unable to work or telework due to reasons related to COVID-19 with two weeks of paid sick-leave related to coronavirus.

Specifically, this leave must be made available to employees required to self-isolate based on the advice of a doctor or ordered into quarantine. It can also be used to get COVID-19 diagnostic testing and care, to take care of a child whose school or childcare arrangement closes due to coronavirus precautions, or for related illness as defined under future regulations.

The sick leave required by the new law must be **in addition** to any sick leave the employer already provides. This leave does not carry over to 2021, but employers cannot force anyone to take this leave instead of other accrued leave, so any individual qualifying will likely wish to use their emergency paid sick leave first.

For any employee quarantined, self-isolated or seeking care and diagnosis for COVID-19, the statute provides that up to 80 hours of service can be reimbursed at 100% of pay, subject to a \$511 per day (\$5,110 aggregate) maximum. For all other circumstances, 2/3 of pay is reimbursed up to \$200 per day (\$2,000 aggregate). Notably, part-time employees are also eligible for emergency paid sick leave—in this case, prorated based on the individual's regularly scheduled hours.

The good news for employers is that they will not be required to bear the cost of this leave. Instead, these amounts are reimbursable through a 100% refundable tax credit against each employer's portion of Social Security taxes, which can be claimed quarterly. If the amount of the tax credit exceeds the employer's aggregate Social Security tax liability for the quarter, the excess may be refunded directly to the employer.



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Two key exceptions worth noting here. First, employers of health care providers or emergency responders can opt-out of these rules. Second, the Department of Labor is authorized to issue emergency regulations to exempt individual companies with fewer than 50 employees from this requirement, if compliance with it would “jeopardize the viability of the business as an ongoing concern.”

EXPANSION OF THE FAMILY MEDICAL LEAVE ACT

The new law also expands the Family Medical Leave Act (FMLA) with respect to employers with fewer than 500 employees by adding a new qualifying event for any employee who has been employed for at least 30 days.

Specifically, FMLA will apply if an employee is unable to work or telework due to a need to care for a child(ren) under age 18 who cannot attend school or childcare due to coronavirus-related closures. In addition to providing 12 weeks of protected FMLA leave for these individuals, the law also provides for a portion of that leave to be paid.

Under the rules, the first ten days of leave may be unpaid, or an employee may use other accrued leave during that period (but they can't be required to do so). After the first ten days, employers must pay employees on this kind of FMLA leave at least 2/3 of the employee's regular rate of pay, up to a maximum benefit of \$200 per day and \$10,000 in aggregate leave payments. These expenditures are reimbursed in the same manner as emergency sick leave—through reimbursable payroll tax credits.

Also, as with the emergency sick leave provisions, employers of health care providers and first responders have the option to opt-out of these rules and there is the possibility of future regulations that will relax the rules for employers with fewer than 50 employees. Additionally, while businesses with fewer than 25 employees are subject to these new FMLA requirements generally, they are not required to maintain a position for an employee on return from leave, but must make a reasonable effort to do so (and to notify that individual if a position subsequently becomes available under certain circumstances).

The paid leave provisions described above will take effect no later than April 2, 2020 and expire on December 31, 2020.

ALSO NOTABLE

The Families First Coronavirus Act also provides \$1 billion of unemployment insurance assistance to the states. In exchange, states are required to relax their eligibility criteria to handle any influx of new applicants as a condition of receiving the aid.

The statute also provides emergency food security assistance for low-income Americans and senior citizens and worksite protections for healthcare workers. In addition, it establishes that federally sponsored health plans will cover COVID-19 testing with no cost-sharing and provides funding to ensure that uninsured individuals can access testing at no cost.