

COVID-19 LEGAL ALERT

March 20, 2020

Families First Coronavirus Response Act: Breaking Down Both Types of Leave

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (“the Act”). The Act creates two new types of leave for employees, each with different requirements. To help employers administer these new types of leave, the following chart breaks down the Act’s requirements:

	Family and Medical Leave Expansion Act	Emergency Paid Sick Leave Act
Employer Size	Applies to employers that employ fewer than 500 employees	Applies to employers that employ fewer than 500 Employees
Minimum Term of Employment	Applies to employees who have been employed for at least 30 calendar days	Applies to all employees, regardless of how long the employee has been employed by the employer
Qualifying Reason(s) for Leave	Employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency	Employee is unable to work (or telework) for any of the following reasons: <ol style="list-style-type: none"> 1. The employee is subject to a federal, state or local 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 a federal, state or local isolation order related to COVID-19 or has

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		<p>been advised by a health care provider to self-quarantine due to concerns related to COVID-19;</p> <p>5. The employee is caring for their son or daughter if the school or place of care of the child has been closed or the child care provider is unavailable due to COVID-19 precautions; or</p> <p>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</p>
Maximum Leave Entitlement	12 weeks	80 hours for full-time employees, and a number of hours that a part-time employee works, on average, over a two-week period
Whether Leave Is Paid	The first 10 days of leave are unpaid, but any time after the first 10 days, up to a total of 12 weeks must be paid at <u>not</u> less than two-thirds of the employee's regular rate of pay	<p>The employee's regular rate of pay, if used for reasons 1-3, above</p> <p>Two-thirds of the employee's regular rate of pay, if used for reasons 4-6, above</p>
Maximum Pay	\$200 per day, or \$10,000 in the aggregate	<p>\$511 per day, or \$5,110 in the aggregate, if used for reasons 1-3, above</p> <p>\$200 per day, or \$2,000 in the aggregate, if used for reasons 4-6, above</p>
Whether an Employee May Substitute Paid Leave	An employee may elect to substitute paid leave, such as vacation leave, personal leave, or medical or sick leave for the 10-day unpaid period	Not applicable
Whether an Employer Can Require an Employee to Substitute Paid Leave	No; an employer may <u>not</u> require an employee to substitute paid leave provided by the employer for leave provided under the Family and Medical Leave Expansion Act	No; an employer may <u>not</u> require an employee to substitute paid leave provided by the employer for leave provided under the Emergency Paid Sick Leave Act; Emergency Paid Sick Leave must be provided in addition to all other kinds of leave offered by the employer

	Family and Medical Leave Expansion Act	Emergency Paid Sick Leave Act
Employee Notice Requirement	An employee must provide the employer with notice of leave “as practicable” if the need for leave is foreseeable The Act does not specify whether an employer may require documentation or notice in writing	An employer may require an employee to follow “reasonable notice procedures” to receive Emergency Paid Sick Leave The Act does not specify whether an employer may require documentation or notice in writing
Employer Notice Requirement	Employers must post a poster prepared by the Department of Labor	Employers must post a poster prepared by the Department of Labor
Restoration of Position Upon Return from Leave	An employer must return an employee to his or her former position upon his or her return to work, consistent with the requirements of the FMLA, unless the employer employs 25 or fewer employees <u>and</u> other conditions are met	Employers are prohibited from retaliating against employees who take Emergency Paid Sick Leave, which would include not restoring employees upon his or her return to work
Excluded Employees	Employers may elect to exclude health care providers or emergency responders from eligibility for this type of Family and Medical Leave	Employers may elect to exclude health care providers or emergency responders from eligibility for this type of Paid Sick Leave
Excluded Employers	None that fall within the employer size above, but the Department of Labor may issue regulations establishing rules by which employers with fewer than 50 employees may obtain an exemption	None that fall within the employer size above, but the Department of Labor may issue regulations establishing rules by which employers with fewer than 50 employees may obtain an exemption
Carryover	Not applicable	Employees may <u>not</u> carry over any unused emergency paid sick time from one year to the next
Payment on Separation of Employment	Not applicable	Employers are <u>not</u> required to pay employees any unused paid sick leave upon separation of employment for any reason
Leave Entitlement Ends	December 31, 2020	December 31, 2020

Congress has directed the Department of Labor to promulgate regulations to provide further guidance on how to administer both types of leave. As those regulations become available, we may learn more about how to administer these types of leave. Because the Family and Medical Leave Expansion Act amends the current Family and Medical Leave Act, employers should follow regulations regarding the Family and Medical Leave Act in administering that type of leave, at a minimum.

Please visit our website for further guidance from our [COVID-19 Response Team](#) and to read our [related Alerts](#). To sign up to receive future COVID-19-related Alerts directly, [please subscribe here](#).

If you have questions, please reach out to your primary contact at Hahn Loeser, or contact one of the attorneys listed below for more information.

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