

COVID-19/CORONAVIRUS – EMPLOYER CONCERNS AND QUESTIONS MARCH 17, 2020 UPDATE – UPDATE #3

Families First Coronavirus Response Act – What Employers Need to Know

In response to the coronavirus pandemic, the U.S. House of Representatives passed the Families First Coronavirus Response Act (FFCRA) (H.R. 6201) on March 14, 2020. The bill is heading to the Senate on March 17, 2020. We are providing a summary of the original H.R. 6201 that was passed by the House on March 14. We will provide updates as they are available.

The FFCRA as drafted applies to employers with fewer than 500 employees. Employees who have worked at least 30 calendar days are eligible. It adds mandatory paid leave requirements through the Emergency Paid Sick Leave Act.

The FFCRA also amends the Family and Medical Leave Act (FMLA) to broaden its application by allowing “public health emergency leave.” It also applies to employers with fewer than 500 employees. It therefore applies to employers with fewer than 50 employees, who before now were not required to comply with FMLA leave provisions.

The provisions of the FFCRA go into effect 15 days after enactment. The FFCRA is scheduled to expire on December 31, 2020.

Emergency Paid Family Medical Leave

The bill provides 12 weeks of job-protected paid FMLA leave to eligible employees for a “qualifying need related to a public health emergency,” which includes the following:

1. To comply with a recommendation or order of a public official or a health care provider on the basis that: a) “The physical presence of the employee on the job would jeopardize the health of others” because the employee has been exposed to coronavirus or exhibits coronavirus symptoms; and b) The employee is unable to both perform the functions of the position of such employee and comply with such recommendation or order.”

2. To care for a family member of an eligible employee with respect to whom a public official or a health care provider “makes a determination that the presence of the family member in the community would jeopardize the health of other individuals in the community” because of the family member was exposed to coronavirus and exhibits coronavirus symptoms.
3. To care for an employee’s child or children under 18 years of age of an 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 health emergency.

Other important provisions include:

- The first 14 days may be unpaid (but see Emergency Sick Leave section below).
- Employees may use accrued personal or sick leave during the first 14 days, but employers may not require employees to do so. *Note that this varies from current FMLA provisions and, quite possibly, your existing policies.*
- After the first 14 days, employers must compensate employees at an amount that is not less than two-thirds of the employee’s regular rate of pay. *These pay requirements apply only to coronavirus-related leave reasons.*
- The job restoration requirements under the existing FMLA apply public health emergency leave as well, except for employers with fewer than 25 employees if: 1) “[t]he position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating condition of the employer -- (i) that affect employment; and (ii) are caused by a public health emergency during the period of leave”; 2) the employer makes “reasonable efforts” to restore the employee to an equivalent position; and 3) if the employer’s “reasonable efforts” fail, the employer makes “reasonable efforts” to contact the employee if an equivalent position becomes available in the following year.

Emergency Paid Sick Leave

Covered employers must now provide all eligible full-time employees two (2) weeks (80 hours) of paid sick leave for the following purposes:

1. To self-isolate because the employee is diagnosed with coronavirus;
2. To obtain a medical diagnoses or care if the employee is experiencing coronavirus symptoms;
3. To comply with a recommendation or order by a public official or health care provider on the basis that the physical presence of the employee on the job would jeopardize the health of others because of: a) the employee’s exposure to coronavirus or b) the employee is exhibiting coronavirus symptoms;
4. To care for an employee’s family member who: a) is self-isolating because the family member has been diagnosed with coronavirus or is experiencing symptoms of

coronavirus and needs to obtain a diagnosis or care; b) who is subject to an order or recommendation from a public official or health care provider to stay out of the community because the family member has been exposed to and/or exhibiting coronavirus symptoms; and

5. To care for the employee's child or children if the school or place of care has been closed or if child care provider is unavailable due to coronavirus.

Other important provisions include:

- For reasons 1-3 above, employers must compensate employees at their regular rates of pay.
- For reasons 4 and 5, employers must compensate employees at no less than two-thirds of the employee's rate of pay.
- Part-time employees are entitled to the number of hours of paid sick time equal to the number of hours they work, on average, over a two-week period.
- Paid sick leave under the FFCRA is *in addition to* other paid time off employers already offer their employees.
- Employers may *not* require employees to exhaust any of their other employer-provided leave before taking emergency paid leave under the FFCRA.
- Employers will be required to post a notice informing employees of their rights to leave.
- It is unlawful to retaliate against an employee for taking paid sick leave under FFCRA or who files a complaint or who has testified in a complaint proceeding.
- An employer who fails to provide the required FFCRA paid sick leave is considered to be in violation of the minimum wage provisions of the Fair Labor Standards Act and is subject to the same fines, penalties, and injunctive relief provisions set out at 29 U.S.C. § 216 and 217.

General Reminders

The COVID-19/Coronavirus pandemic is fluid. Guidance is changing often as developments occur. We strongly recommend monitoring of credible information sources such as the:

Centers for Disease Control

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Minnesota Department of Health -

<https://www.health.state.mn.us/diseases/coronavirus/index.html>

Other Employment Guidance and Concerns

For related guidance and questions about other employment topics related to COVID-19, please see Lind Jensen Sullivan & Peterson's earlier guidance:

<http://www.lindjensen.com/news/>

Workers' Compensation Concerns

For related guidance and questions about workers' compensation concerns related to COVID-19, please see Lind Jensen Sullivan & Peterson's separate guidance:

<http://www.lindjensen.com/covid-19-and-workers-compensation-in-minnesota/>

If you have any employment or other questions regarding the ongoing COVID-19 pandemic as it relates to your employees, please do not hesitate to contact our employment team at Lind Jensen Sullivan & Peterson by email or phone (612) 333-3637.

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