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Employer Update: Amended “Families First Coronavirus Response Act” Signed into Law

The House of Representatives passed the “Families First Coronavirus Response Act” (H.R. 6201) last Friday. On Monday, the House passed several amendments to the proposed Act which significantly change its original version. Most notably, the amendments significantly curtail the reasons for expanded Family Medical Leave Act (“FMLA”) leave and provide caps on the amounts paid as either sick leave or emergency FMLA leave. President Trump signed that amended Act into law on March 18. Under the Act as passed, employers’ obligations begin fifteen days after enactment, on **April 2, 2020**. Any policies or procedures that were drafted based on the first or second version of the House Bill should be reviewed to ensure alignment with the Act as amended. Below is a summary of an employer’s primary obligations under the Act’s Emergency Family Medical Leave and Emergency Paid Sick Leave provisions.

Emergency Family and Medical Leave Expansion

- The Act expands the FMLA by providing job-protected paid leave to employees of public agencies of any size and employers with fewer than 500 employees to care for children forced to stay home due to COVID-19.
- The COVID-19 FMLA leave, which counts towards an employee’s total FMLA leave allotment, applies to any employee who has been working for his/her employer for at least 30 days (a significant departure from employee eligibility under the FMLA) and provides leave for a “qualifying need relating to a public health emergency.”
- A “qualifying need” means the employee is unable to work (or telework) due to a need to care for the employee’s son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to a public health

emergency.

- “Public health emergency” means an emergency with respect to COVID-19 declared by a federal, state or local authority.
- “Child care provider” means a provider who receives compensation for providing childcare services on a regular basis.
- “School” means an “elementary school” or “secondary school” (as defined in 20 U.S.C. 7801).
- The first 10 days of this expanded FMLA leave may be unpaid. However, employees are permitted to use accrued personal or sick leave during the first 10 days.
- After the first 10 days, employers must compensate employees at a rate not less than two-thirds of the employee’s regular rate of pay while the employee is on leave. Pay is not to exceed \$200 per day and \$10,000 in the aggregate.
- Where the need for leave is foreseeable, employees must provide their employers with notice as practicable.
- For employers employing 25 or more employees, the employer must make reasonable efforts to restore the employee to an equivalent position following the employee’s leave. A narrow exception exists for positions that no longer exist due to economic conditions or changes in operations caused by a public health emergency.
- If an employer is unable to restore the employee to an equivalent position, the employer must contact the employee if a position becomes available within one year following the employee’s leave.
- Employers that are party to a multiemployer collective bargaining agreement may fulfill their obligations by making contributions to a multiemployer fund, plan, or program based on paid leave provided to employees under the agreement.
- The COVID-19 FMLA provisions will go into effect 15 days after enactment and expire on December 31, 2020.

- Employees who take FMLA leave *unrelated* to COVID-19 do not qualify for the expanded protections; employers may follow their standard FMLA practices in this scenario.
- The Secretary of Labor may exclude from these requirements employers with fewer than 50 employees based on hardship or employers of health care providers and emergency responders. The process to request an exclusion was not defined in the Act.

Emergency Paid Sick Leave

- Public agencies with more than one employee and employers with fewer than 500 employees will be required to provide full-time employees 80 hours of paid sick leave for specific COVID-19-related issues.
- 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.
- “Employee” is as defined under the Fair Labor Standards Act.
- The Act applies to employees regardless of how long they have been employed.
- Employees are eligible for paid leave if: (1) the employee is subjected to a federal, state, or local quarantine or isolation order related to COVID-19; (2) the employee has been advised by a health care professional to self-quarantine related to COVID-19; (3) the employee is seeking a medical diagnosis related to COVID-19; (4) the employee is caring for an individual who is subject to categories (1) or (2) above; (5) the employee is caring for a son or daughter due to closure of a school or child care provider; or (6) the employee is experiencing any similar condition to be specified by the Secretary of Health and Human Services.
- Pay is based on the employee’s regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work. Employers may pay employees at two-thirds their regular rate for leave related to reasons (4), (5), or (6) above.

- Pay is not to exceed \$511 per day and \$5,110 in the aggregate for leave taken for reasons (1), (2), or (3) above. For leave taken for reasons (4), (5), or (6) above, pay is not to exceed \$200 per day and \$2,000 in the aggregate.
- An employee may, but is not required to, first use any existing paid time off.
- An employer may require employees to follow its reasonable notice procedures following the employee's first sick day.
- Employers will be required to post a notice informing employees of their sick leave rights; a model notice will be provided by the Secretary of Labor following enactment.
- Employers that are party to a multiemployer collective bargaining agreement may fulfill their obligations by making contributions to a multiemployer fund, plan, or program based on paid leave provided to employees under the agreement.
- The Secretary of Labor may exclude from these requirements employers with fewer than 50 employees based on hardship or for employers of health care providers and emergency responders. The process to request an exclusion was not defined.
- The paid sick leave provisions will go into effect 15 days after enactment and expire on December 31, 2020.

Like the first version of the House Bill, the final version still provides tax credits to employers for paid leave and emergency unemployment assistance. The full text of the Act can be found [here](#). Because the Act calls on the Secretary of Labor to provide guidance and issue regulations related to the Act, more detail about the Act's requirements may be forthcoming. Frost Brown Todd will monitor the situation and provide updates as necessary. For more information or questions relating to this specific article, please contact [Catherine Burgett](#), [Fred Gaona](#), [Jeff Shoskin](#), [Steve Tolbert](#), or any attorney in Frost Brown Todd's [Labor & Employment Practice Group](#).

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our

attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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