

President Trump Signs into Law The Families First Coronavirus Response Act: What Employers Need to Know

On March 18, 2020, President Trump signed The Families First Coronavirus Response Act (FFCRA) into law. The FFCRA builds on an \$8.3 billion emergency coronavirus spending package enacted into law on March 6, 2020. The FFCRA provides employees with paid sick leave through the expansion of the Family and Medical Leave Act and by enacting the Emergency Sick Paid Leave Act, in addition to expanding aid to states through grants to assist with the administration of unemployment benefits.

The Emergency Family & Medical Leave Expansion Act (“EFMLEA”)

This Act is an amendment to the Family and Medical Leave Act of 1993 (FMLA). The FMLA applies to private and public employers of 50 or more employees and provides eligible employees with up to 12 weeks of unpaid protected leave. To qualify for FMLA protected leave, an employee must be employed by the employer for at least one year or has worked 1,250 hours.

Here is how the EFMLEA expands the FMLA protections:

- An employee employed for only 30 days by an employer of 50 or more employees is eligible for protected leave.
- The first 10 days of the qualifying leave can be unpaid. An employee can elect to use accrued sick, vacation, or personal leave; however, the employer cannot require the employee to substitute paid leave.
- After that, up to 10 weeks of qualifying leave is required to be paid by the employer at 2/3 the employee’s regular pay rate. The amount of pay cannot be more than \$200.00 per day or \$10,000.00 in the aggregate.
- The job-protected leave is for “a qualifying need related to a public health emergency” only.
- “Qualifying need” is only the following: an employee is unable to work or telework due to a need to care for a child under the age of eighteen (18) if the child’s school or place of care has been closed or 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.

Now that the EFMLEA has been signed into law by the President, it will take effect in 15 days. It will be effective through December 31, 2020.

The Emergency Paid Sick Leave Act

This Act provides emergency mandatory paid sick leave time for employees who are unable to work or telework due to COVID-19. Employers are required to provide up to 80 hours (two weeks) of paid time for full-time employees. For part-time employees, employers are required to pay the number of hours that is equal to the employee’s average hours over a two-week period.

This benefit would be immediately available to employees regardless of how long an employer has employed the employee. An employer may not require an employee to use other paid leave before using emergency paid sick leave, and the leave will not carry over from one year to the next.

Eligible employees are those who are experiencing one of these six situations:

- Subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- Advised to self-quarantine due to the concerns associated with COVID-19.
- Experiencing symptoms of COVID-19 and seeking a medical diagnosis.

The amount of pay for employees eligible under the above three categories cannot be more than \$511.00 per day or \$5,110.00 in the aggregate.

- Caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised to self-quarantine due to the concerns associated with COVID-19.
- Caring for a son or daughter of such employee if the school or place of care of the child has been closed, or the child care provider is unavailable, due to COVID-19.
- Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

The amount of pay for employees eligible under the above three categories cannot be more than \$200.00 per day or \$2,000.00 in the aggregate.

Employers who violate the paid sick time requirements would be considered to have failed to pay minimum wages in violation of Section 6 of the Fair Labor Standards Act, 29 U.S.C. 206 (FLSA) and be subject to the penalties described in Sections 16 and 17 of the FLSA, which include civil penalties and liquidated damages.

Now that the Emergency Paid Sick Leave Act has been signed into law by the President, it will take effect in 15 days and will expire on December 31, 2020.

The Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA 2020)

This Act amends Section 903 of the Social Security Administration Act by providing one billion dollars in 2020 for emergency administration grants to states for activities related to unemployment insurance benefit processing and payment if certain conditions are met.

Within 60 days of the Act being signed into law, one-half of the resources would be allocated for immediate funding to all states to assist with administrative costs if they meet the following criteria: (1) requiring employers to provide notification of the availability of unemployment compensation at the time of separation; (2) ensuring applications for unemployment compensation and assistance with the application process are accessible in at least three ways: in-person, by phone, or online; and (3) notifying applicants when their application is received and being processed and providing information about how to ensure successful processing if the application cannot be processed.

The other half of the available resources are reserved for emergency grants to states which experience an increase in unemployment compensation claims of at least 10% in comparison to the same quarter in the prior calendar year. Those states would be eligible to receive an additional grant to assist with costs related to such an unemployment spike if they meet additional requirements, including: (1) expressing of commitment to maintain and strengthen access to unemployment compensation; and (2) also have demonstrated steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements and the waiting week, and non-charging employers directly impacted by COVID-19 due to an illness in the workplace or direction from a

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public health official to isolate or quarantine workers.

Employers must be mindful that employees who are unable to work may be eligible for paid sick leave under state or local laws. Be sure to consult your state and local laws applicable to your business.

Comment: The Weber Gallagher Employment Group continues to monitor new laws and changes or amendments in the laws that apply to employers. The COVID-19 pandemic is an ever-evolving situation, so we will continue to provide updates, and you may contact our Employment attorneys with questions or for further information.