

COVID-19

CORONAVIRUS: FAMILIES FIRST CORONAVIRUS RESPONSE ACT BECOMES LAW

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Foulston has produced a series of issue alerts as we continue to monitor the evolving COVID-19 situation and provide additional guidance. Please find all updates and our latest resources available [here](#).

Last week, the U.S. House of Representatives passed the Families First Coronavirus Response Act ([H.R. 6201](#)), which, among many other things, provides paid leave for employees who must stay home to care for themselves or their families during the COVID-19 pandemic. Yesterday, the Senate passed the Act, and President Trump signed it into law. The Act makes sweeping changes to the Family and Medical Leave Act (FMLA) and has immediate consequences for employers.

The Act creates two types of paid leave: (1) up to two weeks of sick leave for an employee who is subject to quarantine or experiencing COVID-19 symptoms, is caring for someone who is quarantined or ill, or is caring for a child who cannot go to school; (2) and up to 12 weeks of FMLA leave for an employee to care for a child who cannot go to school or daycare because of COVID-19. Employers will be subsidized for the paid leave through tax credits.

Employers must prepare to implement the Act as soon as possible. Though a deep dive is needed to fully understand your organization's obligations under the Act and implement a compliance plan, here are some of the important things you should know right now.

1. WHEN IS THE ACT EFFECTIVE?

The new paid leave rules will take effect "not later than" April 2, 2020, and expire on December 31, 2020.

2. WHICH EMPLOYERS ARE COVERED BY THE ACT?

The Act applies to employers with fewer than 500 employees. However, the Act gives the Department of Labor (DOL) authority to create an exemption for small businesses with fewer than 50 employees when the paid leave requirements would jeopardize the viability of the business. The Act also permits employers to exclude health care

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providers and emergency responders from the paid leave rules. "Health care provider" is defined to include doctors of medicine and osteopathy, and other healthcare workers designated by the DOL.

3. WHICH EMPLOYEES ARE ELIGIBLE FOR PAID LEAVE?

Paid sick leave must be available for "immediate use" by any employee, regardless of how long that employee has been employed. An employee must have been employed for at least 30 calendar days to be eligible for paid childcare leave under the FMLA.

4. HOW MUCH PAID LEAVE IS REQUIRED?

For paid sick leave:

- The employee may take up to two weeks of sick leave, meaning 80 hours for a full-time employee or the average number of hours over a two-week period for a part-time employee.
- The entire two weeks must be paid. The Act imposes different payment caps depending on the qualifying event. For employees subject to quarantine or experiencing COVID-19 symptoms, the payment is capped at \$511 per day and \$5,110 in the aggregate. For employees caring for another person, the payment is capped at \$200 per day and \$2,000 in the aggregate.
- The employee's minimum pay rate is calculated based on the employee's regular rate of pay or the minimum wage rate, whichever is greater. But when an employee is caring for another person, the pay rate is 2/3 of that amount.

For paid FMLA childcare leave:

- The employee may take up to 12 workweeks of leave.
- However, the first 10 days may be unpaid. The employee can substitute paid leave, if desired.
- After the first 10 days, the employer must pay for each day of leave up to \$200 per day and \$10,000 in the aggregate.
- The employee's pay rate is calculated based on an amount not less than 2/3 of the regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work. The Act provides a special calculation method for employees who work varying schedule hours.

5. WHAT IS MY OBLIGATION TO NOTIFY EMPLOYEES?

Employers must post a notice, in a form approved by the Secretary of Labor, describing the emergency paid sick leave requirements. The Secretary will make a model notice available no later than March 25. The employer must post the notice in conspicuous places on the premises where employee notices are customarily posted.

6. WHAT ARE THE RAMIFICATIONS FOR NON-COMPLIANCE?

Violations of the new emergency paid sick leave requirements are subject to the enforcement scheme and penalties of the Fair Labor Standards Act. Violations of the new FMLA childcare leave requirements are subject to that law.

Obviously, this issue alert only touches the highlights of the Act. It is important to seek counsel to evaluate and implement your organization's specific obligations and any exceptions that may apply. Some parts of the Act may remain unclear until the DOL issues its model notice and guidance.

FOR MORE INFORMATION

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If you have questions or want more information regarding the Families First Coronavirus Response Act, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. Foulston's employment and labor lawyers maintain a high level of expertise regarding federal and state regulations affecting employers. At the same time, Foulston's other practice groups, including the taxation, general business, healthcare, and litigation groups enhance our ability to consider the legal ramifications of these situations. For more information, contact **Tara Eberline**, 913.253.2136 or teberline@foulston.com, or **Sarah Stula**, 913.253.2149 or [sstula@foulston.com](mailto:ssstula@foulston.com). For more information on the firm, please visit our website at www.foulston.com.

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