

## Congress Passes The Families First Coronavirus Response Act

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March 18, 2020

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On March 18, 2020, the Senate voted to approve the revised House bill that addresses the coronavirus (“COVID-19”) outbreak currently sweeping the world. President Trump is expected to sign the bill into law. We summarize the most important employment-related provisions below: paid sick leave, expanded FMLA coverage, and employer tax credits to cover associated costs.

### Emergency Paid Sick Leave

**What Does the Law Do?** The Emergency Paid Sick Leave (“Emergency PSL”) requirements apply to private employers with fewer than 500 employees. Employers of 50 or less may apply to the Department of Labor for an exemption if complying would jeopardize the viability of the business as a going concern.

**Which Employees Are Eligible?** Emergency PSL is available to all current employees, regardless of time of service, full-time/part-time status, and exempt/non-exempt status.

**What Is the Leave For?** This is far more expansive than the allowable use of Emergency FMLA. Employees can take Emergency PSL for any of the following:

- (1) The employee is subject to a Federal, State, or local quarantine related to COVID 19;
- (2) The employee is advised by a health care provider to self-quarantine due 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 quarantine or advised to self-quarantine (as described in sections (1) and (2));
- (5) The employee is caring for a son or daughter if the school or place of care has been closed due to COVID-19, or if the child’s caretaker is unavailable due to COVID-19; or
- (6) The employee is experiencing any other conditions specified by the Secretary of Health and Human Services (unless the employee is a health care provider or emergency responder, in which case the employer can exempt the employee from this sub-section).

**What Does the Leave Provide?** Full-time employees are entitled to 80 hours of Emergency PSL; part time employees get the average number of hours worked in a two-week period. For employees who take Emergency

PSL under (1), (2), and (3) above—essentially, for a need directly related to the employee’s own exposure or concern—PSL is paid at the employee’s regular rate of pay, not to exceed \$511 per day and \$5,110 in the aggregate. For those who take leave under (4), (5), and (6) above—leave related to caring for others or other conditions specified by the Government—PSL will be paid at two-thirds the employee’s regular rate of pay, with a cap of \$200 a day and \$2,000 in the aggregate. The DOL will issue further guidance on calculating rate of pay for Emergency PSL within 15 days of the law’s enactment date.

**When Does the Law Take Effect?** Emergency PSL benefits will be available 15 days after the President signs the law into effect.

**When Does This End?** Emergency PSL requirements expire on December 31, 2020. Unused Emergency PSL will not carryover to next year.

**Other Important Notes:** Emergency PSL does not diminish the rights employees have to paid leave under other laws or current company policies. In other words, employers cannot take away vacation days or other accrued PTO because leave is now available under the Act, and an employee can stack his or her Emergency PSL and other PTO. Employees who have other accrued PTO can elect to use Emergency PSL first, and employers cannot require that an employee first use other accrued PTO.

### **Emergency Family and Medical Leave Expansion**

**What Does the Law Do?** Require certain employers to provide eligible employees with Emergency Family and Medical Leave (“Emergency FMLA”) for the purpose described below.

**Which Employers Are Covered?** All private employers with fewer than 500 employees. But employers with fewer than 50 employees can request an exemption from the Department of Labor if complying would jeopardize the viability of the business as a going concern. Certain public employers are also covered by the law.

**Which Employees Are Eligible?** Employees must have been employed for at least 30 calendar days. Employers can choose to exclude employees who are health care providers or emergency responders from Emergency FMLA benefits.

**What Is the Leave For?** Employees may take leave if they are unable to work or telework because they need to care for a son or daughter because the child’s school or place of care has been closed. The child must be under 18 years of age. This also applies if the childcare provider—presumably a nanny or other caretaker compensated for such services—is unavailable due to COVID-19.

**What Does the Leave Provide?** Generally, employees can take up to 12 weeks of leave. The first 10 days of Emergency FMLA leave are unpaid. But, the rest of the days taken must be paid at two-thirds the employee's regular rate of pay, up to \$200 per day and \$10,000 in the aggregate. The employee can elect to use any available, accrued vacation, sick leave, or other PTO during the first 10 days of unpaid leave.

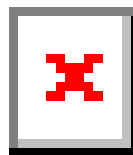
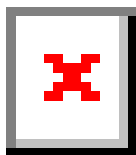
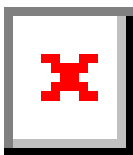
**When Does the Law Take Effect?** The Emergency FMLA Expansion takes effect 15 days after the enactment date of the Act. The enactment date is anticipated to be the date on which the President signs the law.

**What are the Rules on Reinstatement?** As with regular FMLA, employees who take Emergency FMLA generally should be restored to their prior or equivalent job position upon return from leave. Employers with fewer than 25 employees have some additional (yet limited) leeway with regard to restoration obligations.

#### **Tax Credits for Emergency PSL and Paid Emergency FMLA**

Generally, the federal government will provide quarterly tax credits for qualified Emergency PSL and Emergency FMLA wages paid. "Qualified" wages means only the wages required to be paid under the Act, and is limited to the caps mentioned above (e.g., \$511 a day in Emergency PSL taken for personal COVID-19 exposure or concern). If the tax credit exceeds the amount of employment taxes the employer owes for any relevant quarter, the employer will be entitled to a refund of the excess tax credit.

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