



CLIENT ALERT EMPLOYMENT & LABOR

**Families First Coronavirus Response Act**

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Congress has passed and the President has now signed into law the **Families First Coronavirus Response Act** (“Act”). What follows is an outline of key provisions of the Act related to emergency sick leave and emergency family and medical leave. The leave provisions of the Act are effective within 15 days of enactment, which is April 1, 2020, and expire December 31, 2020. Stay tuned for information about employer tax credits under the Act that we will cover in a separate document. Our attorneys continue to monitor the rapidly changing environment of the COVID-19 crisis and stand ready to assist you any way we can. Please do not hesitate to call us.

**Emergency Paid Sick Leave**

- ***Covered Employers:*** Private employers with fewer than 500 employees and public employers regardless of size.
- ***Amount of Leave:*** For full-time employees, up to 80 hours of paid emergency sick leave. For part-time employees, emergency sick leave is based on the employee’s average number of hours worked in a two-week period.
- ***Leave Eligibility:*** Paid emergency sick leave is available immediately to an employee regardless of length of employment. Additionally, an employer may not require an employee to use other employer-provided leave before using the emergency sick leave provided by the Act. Employees may use emergency paid sick leave for the following:
  - Employee subject to government quarantine related to COVID-19 or is caring for an individual subject to such order (note that the act does not specify that the individual must be a family member).
  - Employee advised by health care provider to self-quarantine due to COVID-19 or is caring for an individual subject to such order (again, the Act does not specify that the individual must be a family member).
  - Employee experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
  - Employee is caring for a son or daughter whose school or place of care has been closed or the child care provider is unavailable.
  - If employee is experiencing any other substantially similar condition specified by Secretary of Health and Human Services.

- ***Paid Leave Benefit:*** Emergency sick leave must be paid as follows.
  - Paid at 100 percent and capped at \$511 per day (\$5,110 aggregate)
    - Employee experiencing symptoms of COVID-19 and seeking medical diagnosis.
    - Employee is subject to government quarantine.
    - Employee advised by health care provider to self-quarantine due to COVID-19.
  - Paid at 2/3 of the employee's regular rate of pay and capped at \$200 per day (\$2,000 aggregate)
    - Employee is caring for an individual who is subject to government quarantine.
    - Employee is caring for an individual who has been advised by a health care provider to self-quarantine.
    - Employee is caring for a son or daughter whose school or place of care has been closed or child care provider is unavailable.
    - Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.
- ***Notice Requirement:*** A model notice will be issued by Secretary of Labor and must be posted in a conspicuous place where notices are customarily posted for employees.
- ***Taxation of Wages:*** Wages employers are required to pay for emergency sick leave are not taken into account for purposes of determining Social Security taxes owed by the employer.

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

- ***Covered Employers:*** Private employers with fewer than 500 employees and public employers regardless of size.
- ***Amount of Leave:*** Up to 12 weeks of leave under the Family and Medical Leave Act ("FMLA").
- ***Leave Eligibility:*** Emergency FMLA may be taken by an employee who is unable to work or telework to care for the employee's son or daughter under the age of 18 if the son or daughter's school or place of child care has been closed, or if the child care provider is unavailable due to a public health emergency. The employee must have been employed for at least 30 calendar days by the employer from whom leave is being requested. Public health emergency is defined as an "emergency with respect to COVID-19 declared by Federal, State, or local authority."
- ***Paid and Unpaid Leave Benefit:*** The paid and unpaid portions of the leave are as follows.

- First 10 days of leave are unpaid, but an employee may elect to substitute paid leave (including the paid emergency sick leave described above), but is not required to do so.
- After 10 days, paid at 2/3 of employee's regular rate of pay based on normal schedule and capped at \$200 per day (\$10,000 aggregate).
- **Excluded Employees:** Employers may exclude certain health care providers and emergency responders from this leave entitlement.
- **Possible Small Business Exemption:** The Act authorizes the Secretary of Labor to issue regulations to exempt businesses with fewer than 50 employees if the expanded FMLA requirements would jeopardize the business as a going concern. We will be monitoring this and will provide guidance if and when it is issued.
- **Restoration to Pre-Leave Position:** Under existing FMLA rules, employers must return employees to the same or substantially equivalent position at the end of their FMLA leave. The Act limits this rule under certain circumstances for employers with fewer than 25 employees.
- **Taxation of Wages:** Wages employers are required to pay (after the first 10 days) are not taken into account for purposes of determining Social Security taxes owed by the employer.

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The Wisler Pearlstine team of employment attorneys is ready to address your COVID-19 questions and concerns. Please contact any of us if you have concerns about the impact of COVID-19 in the workplace.

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