

# COVID-19 Prompts New Employee Leave Laws

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The United States Congress recently passed the Families First Coronavirus Response Act (FFCRA), which, among other things, significantly expands the Family Medical Leave Act (FMLA). Unlike the FMLA which applied only to employers with 50 or more employees, the Emergency FMLA Expansion Act generally applies to employers with fewer than 500 employees. In addition, it creates a new category of leave “related to a public health emergency,” when such leave is needed to care for a child whose school or childcare has closed due to a public health emergency, and it requires an employer compensate the employee during the “public health emergency” leave. The first 10 days of leave are unpaid, but an employee may substitute accrued vacation, personal or sick leave; however, an employer may not require that an employee do so. The remainder of the leave is paid, calculated at two-thirds of the employee’s regular rate as calculated under the Fair Labor Standards Act for the number of hours the employee would otherwise be scheduled to work up to a maximum of \$200 per day or \$10,000 total. The new law also requires employers to restore the employee to the same position (or an equivalent position) at the end of the leave period, with certain exceptions for employers with fewer than 25 employees who eliminated the position due to operational changes occasioned by the public health emergency.

The FFCRA also adopted the Emergency Paid Sick Leave Act (EPSLA), which entitles employees to immediate use of paid sick time when the employee is unable to work (or telework) because the employee:

1. is subject to a quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or

6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

The reason for leave determines both the duration of leave and required pay. When the leave is for reasons (1) – (4) and (6), full-time employees may receive up to 80 hours of paid sick leave and part-time employees are entitled to the average number of hours worked in the last two weeks. When the reason for leave is (5), full-time employees are entitled to 12 weeks at 40 hours a week and a part-time employee is entitled to pay for the hours normally scheduled to work over that period. The maximum amount of pay for an employee taking leave for reasons (1) – (3) is up to \$511 per day and \$5,111 in the aggregate, \$200 per day and \$2,000 in the aggregate for an employee taking leave for reasons (4) and (6), and \$200 per day and \$12,000 in the aggregate when the leave is for reason (5). This new law applies to private employers with fewer than 500 employees **and** public-sector employees regardless of the number of employees. Moreover, there is no minimum employment period, and employees can take advantage of this leave regardless of length of employment.

Please contact us if you have questions about these new laws or other employment law issues.