



## MEMORANDUM

TO: FMEA Members

FROM: Jody Lamar Finklea  
Daniel B. O'Hagan

DATE: March 25, 2020

RE: FAMILIES FIRST CORONAVIRUS RESPONSE ACT (H.R. 6201): Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act

On March 18, 2020, President Trump signed this new law—the FFCRA—providing, among other things, important new benefits for employees impacted by coronavirus and imposing new obligations on employers.

The FFCRA is effective April 2, 2020, and sunsets on December 31, 2020. A full text of the FFCRA can be found [here](#).

The FFCRA provides certain tax breaks for benefits provided to employees for private employers. Public employers are excluded from the tax relief provisions.

- **Division C—Emergency Family and Medical Leave Expansion Act**

- Expands FMLA to include a qualifying need related to a public health emergency and requires **up to 10 weeks of paid FMLA leave**.
  - NOTE: The FFCRA does not expand the current FMLA limit of 12 weeks, but expands the purposes and eligible employees who may use FMLA.
- Defines public health emergency as “an emergency with respect to COVID-19 declared by a Federal, State, or local authority.”
- **Applies to any employee who has been employed for at least 30 days.**
- Applies to any employee who is unable to work or telework due to the need to leave work to care for a son or daughter under the age of 18, if the school or place of care has been closed, or the child care provider is unavailable due to a public health emergency.

- Requires all public employers to provide up to 12 weeks of FMLA leave due to the public health emergency (applies to non-public employers with less than 500 employees).
  - **First 10 days of such FMLA leave may be unpaid.**
  - An employee may choose to use any accrued sick, vacation, personal or other paid time off (PTO) during the initial 10 days.
  - Employees must notify their employer of the need for expanded FMLA “as soon as is practicable.”
- Employers must pay employees at least two-thirds of normal wages for the remainder of the expanded FMLA leave (up to 10 weeks), with a cap of **\$200 per day** and **\$10,000 total** for each employee.
  - This amount is calculated based on two-thirds of each employee’s regular rate of pay and the regular number of hours the employee would otherwise have been normally scheduled to work.
  - When an employee’s hours vary, the employer must average the number of hours an employee was scheduled per day over the immediately past six month period (or, make a reasonable estimation, if the employee did not work the entire past six months).
- Employers with more than 25 employees must restore an employee to the pre-leave position or an equivalent position pursuant to normal FMLA requirements.
  - Employers with less than 25 employees have more leeway.
- The Secretary of Labor will be issuing regulations, but they are not likely to be issued before the effective date. Regulations will include exclusions for certain health care providers and first responders.
- **Division E—Emergency Paid Sick Leave Act**
  - Applies to all public employers.
  - **Requires employers to give two weeks of emergency paid sick leave to all employees**, regardless of how long the employee has been employed.
  - All employees are entitled to take emergency paid sick leave **for these six enumerated reasons** (i.e., emergency sick leave is not applicable to other circumstances):
    1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.
    2. The employee has been advised by a health care provider to self-quarantine due to concerns related 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 has been advised to self-quarantine or is experiencing symptoms of COVID-19.
  5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child-care provider of such son or daughter is unavailable, due to COVID-19 precautions.
  6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
- Employers must compensate full-time employees who take emergency sick leave for reasons 1-3 above at their regular rate of pay for 80 hours. Part-time employees are paid for the number of hours such employees normally work on average over a two-week period.
    - **This is capped at \$511 per day and \$5,110 for each employee.**
  - Compensation for reasons 4-6 above is paid at two-thirds of the two-week compensation amount.
    - Capped at \$200 per day and \$2,000 for each employee.
  - Employers may not require employees who use emergency sick leave to find coverage for missed shifts.
  - Employers must post notice of the availability of emergency sick leave in a conspicuous place. A model notice will be provided by the Secretary of Labor. (This will be circulated as soon as it is available.)
  - Employers may not require that an employee use other paid leave prior to the use of the emergency sick leave. Each employee has the option to decide what available paid leave to use.
  - It is unlawful for employers to discharge, discipline, or discriminate against an employee who takes leave under the Emergency Paid Sick Leave Act or files a complaint or proceeding related to the Emergency Paid Sick Leave Act.
  - Violations of the provisions for emergency paid sick leave are considered the same as either an employer's failure to pay minimum wages under the FLSA (29 U.S.C. 206) or considered retaliation in violation of 29 U.S.C. 215(a)(3).
  - The Emergency Paid Sick Leave Act provides the Secretary of Labor the authority to issue regulations which allow employers to exclude certain health care providers and first responders from eligibility under the Emergency Paid Sick Leave Act.