

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

INTRODUCTION

The coronavirus (COVID-19) pandemic has impacted businesses throughout the United State and around the world leading to severe business interruptions and significant challenges for employers. In response, on March 18, 2020, the President signed the Families First Coronavirus Response Act.

EFFECTIVE DATE

April 1, 2020 (set to expire on December 31, 2020).

WHO IS COVERED

- All public and private employers with fewer than 500 employees
- EXCEPT that employers with fewer than 50 employees (and first responders/health care providers) may apply for a hardship exception. This exception is still being finalized but likely will involve a showing that the benefits mandated by the law would jeopardize the viability of the business as a going concern.

NOTICE REQUIREMENTS

Covered employers are required to post a notice informing their employees of these rights “in conspicuous places on the premises of the employer where notices to employees are customarily posted.” The Act does not address employers who are operating through telework, but it would be prudent to circulate notices by email, on company intranet, and in any other manner likely to reach employees who are not physically present on-site.

The Department of Labor has issued a model notice. You can find the notice and the Department’s FAQs [here](#) and [here](#).

A. EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION

- **Eligibility:** Employees are eligible for up to **12 weeks** of paid emergency family

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and medical leave if (a) they have worked for the employer for at least 30 days and (b) they are unable to work or telework because their minor child's school or daycare is closed due to a public health emergency such as the order closing Washington schools.

- **Initial two weeks:** The first two weeks are unpaid (as this overlaps with Emergency Paid Sick Leave below).
- **Payments:** Starting after 10 days, employers must pay no less than 2/3 of the regular pay up to a maximum of \$200/day and \$10,000 total.
- **Tax credit:** Employers may claim a tax credit for the amount they are required to pay.
- **Reinstatement:** Same as FMLA obligations except that an employer with under 25 employees may deny reinstatement under certain conditions set forth in the Act, including the elimination of the position due to economic conditions or other changes in the operating conditions of the employer as a result of a public health emergency during the period of the leave.

B. EMERGENCY PAID SICK LEAVE

- **Eligibility:** All employees are eligible if they fit in any of the following categories:
 1. Are subject to a federal, state, or local quarantine or isolation order related to COVID-19;
 2. Have been advised by a health care provider to self-quarantine due to COVID-19 concerns;
 3. Are experiencing symptoms of COVID-19 and are seeking a medical care;
 4. Are caring for an individual who is covered by (1), (2), or (3) above;
 5. Are caring for a child whose school has been closed (or whose child care provider is unavailable) due to COVID-19 precautions; or
 6. Are 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.

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- **No exhaustion of current benefits:** Employers cannot require their employees to use other employer- provided paid leave before using Emergency Paid Sick Leave, including vacation or PTO.
- **Total hours:** Full-time employees are entitled to up to 80 hours of paid sick leave; part-time employees are entitled to leave in the amount they typically work in a two-week period.
- **Payments:** The maximum amount an employer must pay is \$511 per day/\$5,110 total for reasons 1 – 3 above, and \$200 per day/\$2000 total for reasons (4)-(6) above.
- **Tax Credit:** Employers may claim a tax credit for the amount they are required to pay.
- **Expiration:** All Emergency Paid Sick Leave expires on December 31, 2020. Unused paid leave does not carry over into 2021. There is no right or entitlement for unused leave to be paid to employees on separation from employment.
- **Existing rights:** Emergency Paid Sick Leave does not diminish the rights or entitlements employees already have under (a) other federal, state, or local law, (b) a collective bargaining agreement, or (c) existing employer policy. In other words, this is an extra two weeks of leave, even if an employer offers leave in compliance with Seattle and Washington State laws or a voluntary employer policy.

Please do not hesitate to contact us for additional information on any of these topics.

Best regards,



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