

The Families First Coronavirus Response Act (Act), signed by President Trump on March 18, 2020 provides paid sick leave to employees for specific reasons related to Covid-19 and creates two new refundable payroll tax credits for businesses.

- The Act applies to businesses with fewer than 500 employees. An employer is covered by the Act if they had fewer than 500 employees on the payroll (regardless of hours worked) for 20 or more calendar weeks in either the current or preceding year.
- Employers with fewer than 50 employees are eligible for an exemption if complying with the Act would threaten the viability of the business. Procedures for requesting an exemption have not been finalized at this time.
- Employers must permit employees to use the new paid sick time before any other leave provided by the employer.
- The Secretary of Labor will publish a notice regarding paid sick leave that must be displayed in a conspicuous place in the workplace.
- Unused sick leave available under the Act will not carry to 2021.

Paid sick leave in effect through December 31, 2020, provides for:

- Two weeks (up to 80 hours) of paid sick leave at 100% of the employee's pay if the employee is unable to work because the employee is quarantined and/or getting tested for COVID-19.
- Two weeks (up to 80 hours) of paid sick leave at two-thirds pay if the employee is caring for an individual subject to quarantine, caring for their child (under 18) due to school or childcare closure because of COVID-19, or the employee is experiencing any other substantially similar condition specified by Health and Human Services ("HHS") in consultation with the Department of Treasury and Department of Labor.

Expansion of Family and Medical Leave Act (FMLA) in effect through December 31, 2020:

- An additional 10 weeks of paid family leave at two-thirds the employee's regular rate of pay is available for an individual who has been employed at least 30 calendar days and is unable to work for reasons related to COVID-19, or to care for their child whose school or childcare provider is closed.
- The 10 weeks are in addition to the 2 weeks of paid sick leave.
- The employer is not required to pay the employee for the first 10 days of emergency leave. The employee may elect to use accrued paid time off, but cannot be required to by their employer.

An employee qualifies for leave if they are unable to work, or telework, due to COVID-19 and they meet one or more of the following:

1. They are subject to a Federal, State, or local quarantine or isolation order related to COVID-19 {eligible for up to 80 hours of leave}.
2. They have been advised by a health care provider to self-quarantine due to concerns related to COVID-19 {eligible for up to 80 hours of leave}.
3. They are experiencing COVID-19 symptoms and are seeking a medical diagnosis {eligible for up to 80 hours of leave}.
4. They are caring for an individual subject to an order described in (1) or are under self-quarantine as described in (2) {eligible for up to 80 hours of leave}.
5. They are caring for their child, who is under the age of 18, whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19 {eligible for up to 12 weeks of leave}.
6. They are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury {eligible for 80 hours of leave}.

Calculation of Sick Pay:

- For leave reasons (1), (2), or (3), employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).
- For leave reasons (4) or (6), employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).
- For leave reason (5), employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period).

Employer Sick Leave Payroll Tax Credits:

Credit will be available to employers who are required to provide paid leave under the Act.

- Reimburses, dollar-for-dollar, the cost of providing COVID-19 related leave to their employees.
- Credits will be taken on the quarterly payroll tax report, Form 941.
- Excess tax credits will be refundable, subject to certain limitations.
- Sick leave credit can be claimed, quarterly, for 100% of sick leave wages paid subject to the following limits:
 - For an employee receiving sick leave for themselves, the credit is limited to wages of \$511 per day (total of \$5,110).
 - For an employee caring for their child or family member, the credit is limited to wages of \$200 per day (total of \$2,000).
- FMLA credit can be claimed, quarterly, for 100% of qualified leave wages paid during a quarter. The wage limitation is \$200 per day, per employee, not to exceed \$10,000 for all quarters.
- Similar credits will apply to self-employed individuals. The Treasury department is expected to provide guidance regarding documentation requirements for self-employed individuals.
- Sick leave and family leave wages paid under the Act will not be considered wages for the employer's portion of social security tax.
- Both tax credits can be increased by the amount of health plan costs allocated to the leave wages.
- Businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes. The IRS will provide guidance and release a form in the coming weeks to request expedited advances from the IRS for taxes already paid.

IRS examples of the use of tax credits:

- If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.
- If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.
- Equivalent childcare leave and sick leave credit amounts are available to self-employed individuals under similar circumstances. These credits will be claimed on their individual income tax return and will reduce estimated tax payments.