

# President Trump Signs the Families First Coronavirus Response Act

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President Trump has signed into law a revised version of the Families First Coronavirus Response Act (“FFCRA”) that was passed initially by the U.S. House of Representatives on March 14, 2020, revised on March 16, 2020, and subsequently passed by the U.S. Senate on March 18, 2020.

The most immediate impact for employers will be the law’s Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act. Both of Acts will take effect no later than 15 days after the law’s enactment, or April 2, 2020, and both will expire on December 31, 2020.

## 1. Emergency Family and Medical Leave Expansion Act.

The FFCRA temporarily expands the Family and Medical Leave Act (“FMLA”) to apply to public health emergencies related to the COVID-19 virus (“coronavirus”). The relevant provisions of the Act are summarized below:

- The new law applies to employers with fewer than 500 employees.
- Employees who have been employed by the employer for 30 days are eligible for Emergency Family and Medical Leave.
- An eligible employee who is unable to work or telework may take up to 12 weeks of job-protected leave to care for the employee’s child under the age of 18 if the child’s school or place of care is closed or unavailable because of the coronavirus emergency.
- The first 10 days of the leave may be unpaid.
- An employee may elect, in accordance with the provisions of the FMLA, to use accrued paid leave (g., vacation, personal, sick leave) during this 10-day period.
- After the initial 10-day period, an employer generally must pay an employee on leave at a rate of two-thirds of the employee’s regular rate of pay for the number of hours that the employee would otherwise be scheduled to work. An employee who is a part-time employee or who works irregular hours would be entitled to pay during leave at an amount calculated on the average hours worked by the employee in the six months prior to commencement of leave. If an employee has worked for the employer for less than six months, the pay while on leave will be based on the employee’s reasonable expectation of hours at the time of hire.

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- The new law limits the paid leave entitlement to \$200 per day and \$10,000 in total to each employee.
- Emergency FMLA generally will have the same job protection as traditional FMLA. The law includes an exception to this provision for employers with fewer than 25 employees. That exception only applies if an employee's position no longer exists following an employee's Emergency FMLA leave because of economic conditions or other changes in the operating conditions of the employer, and the employer makes a reasonable attempt to restore the impacted employee to an equivalent position, and if those efforts prove unsuccessful, also makes a reasonable effort to return the impacted employee to an equivalent position if one becomes open during the year after the impacted employee's leave concludes or the public health emergency ends, whichever date is earlier.
- The Secretary of Labor has the authority to issue regulations to exempt employers with fewer than 50 employees if the requested leave would jeopardize the viability of the employer's business.
- The law also provides that employers may exclude employees who are health care providers or emergency responders from the Emergency FMLA benefit entitlement.

### 2. Emergency Paid Sick Leave Act.

The FFCRA also provides paid sick leave to eligible employees. The relevant provisions of the Act are summarized below:

- The new law applies to employers with fewer than 500 employees.
- The law requires employers to provide paid sick leave, paid at the higher of either an employee's regular rate of pay or the applicable minimum wage (federal, state or local), up to a maximum of \$511 per day and \$5,110 in total, to an employee who cannot work or telework because of one of the following reasons:
  - (i) the employee is subject to a federal, state or local quarantine or isolation order because of the coronavirus;
  - (ii) the employee has been advised by a healthcare provider to self-quarantine because of the coronavirus; or
  - (iii) the employee is experiencing symptoms of the coronavirus and is seeking a medical diagnosis.
- The law requires employers to provide paid sick leave, paid at the higher of either two-thirds of an employee's regular rate of pay or two-thirds of the highest applicable minimum wage rate, up to a maximum of \$200 per day and \$2,000 in total, to an employee who cannot work or telework because of one of the following reasons:
  - (i) the employee is caring for a son or daughter whose school or place of care is closed or unavailable because of the coronavirus;
  - (ii) the employee is caring for an individual who has been directed or advised to self-quarantine or self-isolate due to the coronavirus; or
  - (iii) 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."
- Full-time employees are eligible for up to 80 hours of paid sick leave. Part-time employees are entitled to paid sick leave hours in an amount equal to the average number of hours the part-time employee regularly works over a two-week period.

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- The Secretary of Labor has the authority to issue regulations to exempt employers with fewer than 50 employees if the requested leave would jeopardize the viability of the employer's business.
- The law also provides that employers may exclude employees who are health care providers or emergency responders from the Paid Sick Leave benefit entitlement.

3. Tax Credits.

The Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act both include refundable tax credits of up to 100% to employers that are required to provide these benefits. It is important to note that this tax credit is a refundable tax credit. Thus, if the tax credit amount for which an employer (or self-employed taxpayer) is eligible exceeds the amount of Social Security and Railroad Retirement payroll taxes owed, the taxpayer will be entitled to a refund for the excess amount. Like the rest of the legislation, the tax credit is effective through the end of calendar year 2020.

**This advisory was prepared by Liam O'Connell, co-managing partner of Nutter and chair of the firm's Labor, Employment and Benefits practice group. For more information, please contact Liam or your Nutter attorney at 617.439.2000.**

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