

The Family First Coronavirus Response Act is Signed into Law

On Wednesday, March 18, 2020, the Senate approved the Family First Coronavirus Response Act (the “Act”), which was passed by the House over the weekend. Within hours of the Senate's approval the Act was signed into law by President Trump. The law must be in effect within 15 days from its enactment and will remain in place until December 31, 2020.

In addition to funding for economic assistance and Coronavirus (COVID-19) testing, the Act provides for emergency paid sick leave and expands Family and Medical Leave Act (FMLA) coverage for employees impacted by the coronavirus. Highlights of these two important employment-related provisions are below

Emergency Paid Sick Leave Act

Requires certain employers (those with fewer than 500 employees and government employers) to provide up to 80 hours of paid sick leave to full-time employees (or the equivalent of two weeks of hours for part-time employees) affected by the coronavirus.

Paid sick leave must be made available immediately to workers who are unable to work (or telework) for the following reasons:

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 medical diagnosis;
4. The employee is caring for an individual who is subject to a federal, state or local quarantine order, or the individual has been advised to self-quarantine due to concerns related to COVID-19;
5. The employee is caring for the employee’s son or daughter, if the child’s school or childcare facility has been closed or the child’s care provider is unavailable due to COVID-19 precautions; or
6. The employee is experiencing any other substantially similar condition specified by Health and Human Services in consultation with the Department of the Treasury and the Department of Labor.

Employers must provide paid sick leave at the employee’s regular rate of pay (capped at \$511 per day and \$5,110 in aggregate) if it is taken for reasons 1-3 above. If the leave is being used to care for another individual or child, the employee is only entitled to two-thirds of his or her regular rate of pay (capped at \$200 per day and \$2,000 in aggregate).

Employers cannot require employees to use other paid leave provided by the employer before using paid sick leave provided by this act. Employers with existing sick leave policies must provide this paid leave in addition to any existing paid leave available.

Covered employers must post a notice to employees about their rights under this act once the Department of Labor prepares it.

Expanded Family and Medical Leave Act

Expands the FMLA to provide employees with paid job protected FMLA leave if affected by the coronavirus. This provision also applies only to government employers and those employers with fewer than 500 employees.

Covered employers must provide employees, who have been employed for at least 30 days, up to 12-weeks of family and medical leave for employees unable to work (or telework), due to a need for leave to care for the employee's minor child because the child's school or child care provider is closed due to a public health emergency, such as the coronavirus. Note, this is a significant change from the previous version of the bill approved by the House.

The first two weeks (10 days) of leave are unpaid. The employee may choose to substitute accrued vacation, personal leave or other medical or sick leave during this period (including the emergency paid sick leave described above) but an employer cannot require an employee to do so. After the first two weeks of unpaid leave, employers must provide paid FMLA leave at a rate of no less than two-thirds of the employee's usual rate of pay for the remaining ten weeks (capped at \$200 per day and \$10,000 in aggregate).

As with traditional FMLA leave, employers are required to restore employees to their same or similar position but outlines an exception for employers who have less than 25 employees.

The Act authorizes the Secretary of Labor to exclude certain health care providers and emergency responders from providing extended Family and Medical Leave as well as small businesses with fewer than 50 employees if providing the leave "would jeopardize the viability of the business."

Covered employers that are required to offer emergency FMLA or paid sick leave will be eligible for refundable tax credits.

As with most everything related to COVID-19, several unanswered questions remain regarding this Act. We will continue to monitor all developments and will update you as more information is released.

Please reach out to your AssuredPartners Employee Benefit Team if you have any questions. In addition, continue to review our Coronavirus/COVID-19 Resources provided on our website. This information will be updated regularly, so we recommend you bookmark this page and return frequently for the latest information.

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