

# Families First Coronavirus Response Act Explained

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# What is it? TWO parts\*

- Paid Sick Leave - which also has TWO parts
- Emergency FMLA

\*Plus provisions relating to unemployment comp and payment of Covid-19 testing, which we are not discussing today.

# Does it Apply to YOU?

YES, if:

- it is between 4/1/2020 – 12/31/2020;
- you have between 50 and 500 part-time or full-time employees;
- you have less than 50 employees and you have not excluded yourself from portions of the Act;
- at the time the employee's leave would start; AND
- employee worked for at least 30 days before requested leave for expanded FMLA.

# How to Count Employees?

"Employee" has the same meaning as under the Fair Labor Standards Act;

Thus all US (including territorial) employees are included;

Full-time, part-time, and "joint employees" working on your site temporarily and/or through a temp agency.

# Small Business Exception

- Applies to employers with less than 50 employees;  
and
- Requires certification by an authorized officer of the  
business

# What is Excluded?

- Paid sick leave due to school or place of care closures or child care provider unavailability for Covid-19 related reasons; and
- Expanded family leave due to school or place of care closures or child care provider unavailability for Covid-19 related reasons when doing so would jeopardize the viability of the small business as a going concern.

## Required Findings by Small Business:

1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity; OR
2. The absence of the employee(s) would entail a substantial risk to the financial health or operational capabilities of the small business because of the employee(s) specialized skills, knowledge of the business or responsibilities; OR

## Required Findings by Small Business:

3. There are not sufficient workers who are able, willing and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee(s) requesting leave, and these labor or services are needed for the small business to operate at a minimal capacity.

# PAID SICK LEAVE – Employee Sickness

- If employee is unable to work or telework because:
  - s/he is subject to a Federal, State or local quarantine or isolation order related to Covid-19; or
  - S/he has been advised by a health care provider to self-quarantine due to concerns related to Covid-19; or
  - S/he is experiencing symptoms of Covid-19 and is seeking a medical diagnosis, then
- Employee is entitled up to 80 hours over a two-week period
- To be paid regular rate of pay up to a max of \$511/day or \$5,110 over the entire sick leave period.

## PAID SICK LEAVE – Other's Sickness or Care

- If employee is unable to work or telework because:
  - s/he is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to Covid-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to Covid-19; or
  - S/he is caring for a child whose school or place of care is closed, or child care provider is unavailable, due to Covid-19 related reasons; or
  - S/he is experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services, then...

# PAID SICK LEAVE - Others' Sickness or Care (CONT'D)

- Employee is entitled up to 80 hours over a two-week period
- To be paid at the employee's regular rate of pay up to \$200/day or \$2,000 over the entire sick leave period.

## Expanded FMLA

- This is solely to care for your child whose school or place of care is closed, or child care provider is unavailable, due to Covid-19 related reasons.
- First 10 days are unpaid, unless employee takes paid sick leave or substitutes other accrued vacation leave, personal leave or medical or sick leave that your handbook might permit to be taken.
- Weeks 3-12, employee is paid at 2/3 of employee's regular rate of pay but not more than \$200/day or \$12,000 for the 12 weeks that includes both sick leave and expanded FMLA.

# Intermittent Leave? **MAYBE** under sick leave

**NO:** if employee is caring for self or another due to suspected illness

**YES:** is employee is caring for child due to school or child care closure

## Intermittent Leave? YES under expanded FMLA.

- An employer must offer intermittent leave if employee is unable to telework the normal schedule of hours due to one of the qualifying reasons;
- Can be in any increment, provided that you and employee agree;
- E.g. You and employee agree on 90 minute increment. Employee works from 9am-2:30, takes leave from 2:30-4:00, returns to teleworking at 4:00.

# How to Calculate Part-Time Benefits

- ❖ Average number of hours worked in a 2-week period using a 6-month average.
- ❖ If employee does not have 6 months of employment history, use the number of hours you and employee agreed s/he would work upon hiring.
- ❖ If no such agreement, use the average hours per day the employee was scheduled over the entire term of his/her employment to date.
- ❖ This is for both sick time and expanded FMLA.

# Expanded FMLA – Son or Daughter

- Adult son or daughter who
  - Has a mental or physical disability; and
  - Is incapable of self-care because of that disability.
- Own child;
  - Biological
  - Adopted
  - Foster
  - Stepchild
  - Legal Ward
  - Child whom employee is standing in loco parentis

## What if employee already used FMLA this year?

- ✓ Eligible employee is entitled to paid sick leave regarding of FMLA usage.
- ✓ If you were covered by the FMLA prior to 4/1/2020, an eligible employee can only take a maximum of 12 weeks FMLA for any reason. So, if employee took 10 weeks of FMLA for a non-Covid-19 reason, the employee can take 2 additional weeks for Covid-19 reason.
- ✓ If you become covered by the FMLA on 4/1/2020, this analysis doesn't apply. Eligible employee can take up to 12 weeks.

## Another Example

Assume an employee takes 4 weeks of expanded FMLA in April 2020 to care for a child whose school is closed due to Covid-19. Those 4 weeks count against the employee's entitlement to 12 weeks in a 12-month period. If the employee needs to take FMLA leave in August 2020 for a preexisting medical condition, the employee is entitled to another 8 weeks of FMLA. After this second leave, the employee will have exhausted their leave entitlement for a 12-month period. This employee could still take paid sick leave, unless she took paid sick leave concurrently with the first two weeks of expanded FMLA in April 2020.

# The Good News

- Employers are entitled to a tax credit
- "Qualified sick leave wages" and "qualified family leave wages"
- Can be claimed quarterly
- Creditable against the employer's total liability for Social Security taxes for such quarter (employer's 6.2%)
- Refundable if exceeds the amount the employer owes

# Required Documentation

- If you intend to claim the tax credit, then you should require the employee to provide:
  - Support of such leave "to the extent permitted under the certification rules for conventional FMLA requests", such as
  - "a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider"
- But the DOL defers to the IRS and says: "You should consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any substantiation to be retained to support the credit."

# Immediate Next Steps

- Develop plan to request and retain documentation just discussed;
- Amend your handbook or policies to account for paid sick leave and expanded FMLA;
- Post the notice describing the Emergency Paid Sick Leave Act.

# Understanding the CARES Context



KEEPING AMERICAN WORKERS PAID



ASSISTANCE FOR AMERICAN WORKERS, FAMILIES & BUSINESSES



SUPPORTING HEALTHCARE SYSTEMS IN THE FIGHT AGAINST THE CORONAVIRUS



ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE UNITED STATES ECONOMY



coronavirus relief funds for state and local governments



Miscellaneous (Emergency Appropriations)



Paycheck Protection Program



Unemployment Insurance



Health Supply Shortages



Stabilization Act of 2020



Coronavirus Relief Funds



Appropriations & Programs



EIDL Grants



Rebates and Other Provisions



Access to COVID-19 Health Care



Air Carrier Worker Support



Business Tax Credits



Health Care Workforce



Medicare & Medicaid



Human Services



Public Health



Over-the-Counter Drugs

Agricultural Programs

Department of Commerce

Department of Defense

Corps of Engineers

Department of Treasury

Department of Homeland Security

Department of Interior

Department of Labor

Legislative Branch

Veteran Affairs

Department of State

Ice on Fire

Department of Transportation

# Questions?

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