

CLIENT ALERT

Families First Coronavirus Response Act Mandates Paid Sick and Family Leave For Many Employers

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On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (“[FFCRA](#)”) to provide emergency relief during the COVID-19 pandemic. While the FFCRA includes a variety of provisions, most critical for employers are its paid sick and family leave provisions, which are the focus of this client alert.

Highlights

- FFCRA’s paid sick and family leave requirements only apply to employers with fewer than 500 employees;
- Employees may take up to two weeks of paid sick leave, which is capped at \$511 per day or \$5,110 total for self-care related to the coronavirus and at \$200 per day or \$2,000 total if caring for another individual impacted by the coronavirus;
- Employees may take up to 10 weeks of paid family leave, at two-thirds pay, to care for a child whose school is closed or whose childcare provider is unavailable due to the coronavirus; paid family leave is capped at \$200 per day and \$10,000 total;
- FFCRA provides a tax credit to employers that will cover 100% of qualifying paid sick and family leave;

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- The Department of Labor (“DOL”) may issue regulations exempting businesses with fewer than 50 employees if compliance would jeopardize the company’s ability to survive;
- Employers must start complying with the law’s paid leave requirements no later than April 2, 2020;
- The paid leave requirements expire on December 31, 2020.

Paid Sick Leave

FFCRA’s Emergency Paid Sick Leave Act (“PSLA”) requires up to 80 hours of paid sick leave for all employees for immediate use, regardless of how long they have been employed, related to the coronavirus.

Key provisions of the PSLA include:

- Amount of Paid Sick Leave. Full-time employees may take up to 80 hours of paid sick leave. Part-time employees can take up to the number of hours that such employee works, on average, over a two-week period. Paid sick leave does not carry over from year to year.
- Eligible Uses. Paid sick leave can be taken for many uses related to the coronavirus, including to comply with a governmental or health care provider’s quarantine or isolation order, at the advice of a health care provider to self-quarantine, if the employee is experiencing symptoms and seeking a medical diagnosis, to care for or assist someone who is subject to a governmental or health care provider’s order to quarantine or isolate, or to care for a child whose school is closed or a child care provider is unavailable due to coronavirus.
- Paid Sick Leave Compensation. Compensation for paid sick leave depends on whether the employee is taking leave for self-care or to care for someone else. For self-care, the employee’s sick leave is compensated at his or her regular rate of pay or the applicable minimum wage, whichever is greater (subject to the caps below). If the employee is caring for someone else, his or her sick leave is compensated at two-thirds of the regular rate of pay or the applicable minimum wage, whichever is greater (subject to the caps below).
- Caps on Paid Sick Leave Compensation. If an employee is taking sick leave for self-care, his or her compensation is capped at \$511 per day or \$5,110 in the aggregate. If the employee is taking sick leave to care for someone else, his or her compensation is capped at \$200 per day or \$2,000 in the aggregate.
- Additional Employee Protections. Employers cannot require employees to use other paid leave before using PSLA leave, nor can they discriminate against an employee for taking such leave. The PSLA also states that

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nothing in it diminishes an employee's existing rights or benefits under any law, collective bargaining agreement or employer policy.

- Notice. Employers are required to post in a conspicuous place a notice of employees' rights under the PSLA, which the DOL will publish within seven days.

Paid Family Leave

FFCRA's Emergency Family and Medical Leave Expansion Act ("FMLEA") expands the federal Family and Medical Leave Act to provide for a 12-week "public health emergency leave" for parents who cannot work or telework to care for a child.

Key provisions of the FMLEA include:

- Unpaid Leave. The first 10 working days of public health emergency leave are unpaid, during which time employees may elect to use any accrued paid time-off (including vacation, personal, or sick time).
- Paid Family Leave Compensation. The remaining approximately 10 weeks of public health emergency leave is paid at two-thirds of the employee's regular rate of pay and is based on the number of hours the employee is normally scheduled to work (subject to the cap below).
- Cap on Paid Family Leave Compensation. The FMLEA caps paid leave amounts at \$200 per day and \$10,000 in the aggregate.

Finally, remember that an employer's paid leave obligations may change rapidly during this crisis. In addition to forthcoming DOL regulations, many cities and states (some of which already have paid sick leave laws) are considering additional protections for workers. While an employer's main focus should be on compliance during these challenging times, employers should also update their written policies as soon as practicable.

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If you have any questions about this client alert, or any employment-related matters related to the COVID-19 crisis or otherwise, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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