

UPDATE: The Families First Coronavirus Response Act Is Enacted

March 19, 2020

Michael J. Volpe, Nicholas M. Reiter and Allison B. Gotfried

As we previously wrote [here](#), Congress has drafted emergency legislation (H.R. 6201) to provide employees paid family and medical leave and paid sick leave in response to the COVID-19 pandemic. Last night, President Trump signed into law the Families First Coronavirus Response Act (the "Act"). The Act will take effect on or by April 2, 2020.

The Act creates two new emergency leave benefits for eligible employees: (1) emergency paid family and medical leave and (2) emergency paid sick leave. The Act generally applies to employers with **fewer than 500 employees**; certain exceptions are discussed in this alert.

Key provisions of the Act that will impact employers are summarized below, including important amendments that have been added to the law since our previous alert.

Up to 12 weeks of ***Emergency Family Medical Leave*** (EFML) is available to employees who have been employed a minimum of 30 days and who are unable to work (or telework) because they need **to care for their child whose school is closed, or whose childcare provider is unavailable because of a public health emergency**. Additionally, the Act provides that:

- The first ten (10) days of EFML is unpaid, but employees may elect to substitute any of the employer's other paid leave benefits during this period, e.g., paid vacation leave.
- After the initial unpaid ten (10) day period, employers must pay employees at least two-thirds of their regular compensation, up to a maximum of \$200 per day or \$10,000 in the aggregate.
- The FMLA's job protections apply to EFML, but there is an exemption for employers with fewer than 25 employees, where the employee's position is eliminated because of economic slowdowns related to the declaration of a public health emergency and the employer attempts to restore the employee's employment within a year.
- The Secretary of Labor is permitted to exempt employers with fewer than 50 employees from the EFML requirements if the Act's requirements would "jeopardize the viability of the business as a going concern." We are closely monitoring the Department of Labor for announcements about possible exemptions for small employers.

Emergency Paid Sick Leave (EPSL) is available to all employees for immediate use, regardless of their length of employment. Employees may take EPSL for the following reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order due to COVID-19;
2. The employee has been advised by a healthcare provider to self-quarantine because of concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual who is quarantined or advised by a healthcare provider to self-quarantine;
5. The employee is caring for a son or daughter if the school or place of care for the child has been closed, or the child care provider is unavailable, because of COVID-19 precautions;
6. The employee is experiencing any other, substantially similar condition, as specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Other aspects of EPSL include:

- Full-time employees are entitled to 80 hours of EPSL, and part-time employees are entitled to EPSL in the amount equal to the average amount of hours they work over a two-week period.
- There is no carryover of EPSL into the following calendar year, and employers are not required to pay out unused leave upon an employee's separation from employment.
- Employers must pay EPSL to employees in addition to any other leave benefits the employer offers, and employers may not require employees to use any other leave before using EPSL.
- If an employee uses EPSL to care for himself or herself for reasons (i)-(iii) listed above, employers must pay the employee his or her regular compensation, up to a maximum of \$511 per day or \$5,110 in the aggregate.
- If an employee uses EPSL to care for a family member or for reasons (iv)-(vi) listed above, employers must pay the employee either two-thirds of his or her regular compensation or the minimum wage, whichever amount is greater. Employers must only pay up to a maximum of \$200 per day or \$2,000 in the aggregate.
- Employers must post a notice about leave entitlements in a conspicuous location within the job site; the Department of Labor is expected to publish a model notice for posting on or before March 25, 2020.
- The Secretary of Labor is permitted to exempt employers with fewer than 50 employees from the EPSL requirements if the Act's requirements would "jeopardize the viability of the business as a going concern." We are closely monitoring the Department of Labor for announcements about possible exemptions for small employers.

The Act provides employers some financial relief in the form of tax credits on a dollar-for-dollar basis for EFML or EPSL payments to employees, subject to certain caps.

In addition to the Act, many state and local jurisdictions are considering legislation that may

supplement the Act's leave benefits in response to COVID-19. Employers should confer with counsel about how state and local laws may augment the leave to which their employees are entitled.

We are monitoring legislative and regulatory developments and will provide updates as more guidance is released. For some answers to commonly asked questions regarding how to communicate with staff about COVID-19 challenges, [click here](#). For additional information regarding COVID-19 legal issues, please visit [Venable's COVID-19 legal resources page](#).

Employers with additional questions should contact [Michael Volpe](#), [Nicholas Reiter](#), [Allison Gotfried](#), or any other [Venable Labor and Employment Group](#) attorney.