

President Trump Signs Expanded Family and Medical Leave Act in Response to Coronavirus

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U.S. President Donald J. Trump has signed a law that expands the Family and Medical Leave Act (FMLA) and provides paid sick leave in response to coronavirus (COVID-19). Effective April 2, 2020, the new law applies to employers with less than 500 employees.

The FMLA portion of the law expands leave to include a “qualifying need related to a public health emergency.” A “qualifying need related to a public health emergency” is defined as “the inability to work or telework because the employee is caring for a son or daughter under the age of 18 whose school or child care provider is closed” due to a COVID-19 emergency.

The law further allows regulations to be promulgated by the Commissioner of the Department of Labor. These regulations are permitted to limit the application of leave to certain health care providers and employers with less than 50 employees when the application would “jeopardize the vitality of the business.”

The first ten days of the expanded leave are unpaid, but employees may elect to use accrued paid time off. After ten days, employees shall be paid an amount that is not less than two thirds of their regular pay rate. However, employees shall not receive more than \$200 per day and \$10,000 in the aggregate.

The law makes no mention of insurance continuation. As such, subject to further guidance and/or legislation, the standard FMLA regulations apply. Therefore, employers will be responsible for their share of an employee’s insurance premium while the employee is on leave.

Additionally, while FMLA leave is job-protected, the expanded leave includes an exception for employers with less than 25 employees if the employee’s job is eliminated following the leave because of operational changes due to a public health emergency.

Lastly, the law excludes employers with less than 50 employees from civil FMLA damages.

The law also provides for eighty hours of paid sick leave for full-time employees and a two week leave equivalent for part-time employees 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 healthcare provider to self-quarantine due to 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 subject to an order as described in (1) or has been advised as described in (2).
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable due to COVID-19 precautions.
6. 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.

The law limits the required pay to \$511 per day and \$5,110 in the aggregate when the leave is taken for reasons 1, 2, or 3 above. The law limits the required pay to \$200 per day and \$2,000 in the aggregate when the leave is taken for reasons 4, 5, or 6.

The employer is not permitted to require an employee to use other paid leave provided by the employer before the employee uses the paid sick time.

Like the expanded FMLA leave, the employees of certain health care providers may be excluded.

The law includes a refundable tax credit for employers that are required to offer emergency FMLA or paid sick leave. A model notice is expected to be available within 7 days.

For specific questions related to the expanded FMLA leave in response to coronavirus, please contact [Tracy Armstrong](#) or any other member of our [Employment Law Team](#) at 732-313-2323.

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