

Family First Coronavirus Response Act: Impact on Small Businesses *(Updated March 25, 2020)*

I have had a number of clients reach out and ask about the Family First Coronavirus Response Act, which was recently signed into law, and I wanted to make people aware of its provisions and their impact on small businesses.

The Act applies to small private sector employers with less than 500 employees. The act allows the Department of Labor to issue regulations that may exempt certain employers with fewer than 50 employees from providing paid sick leave or family leave if the requirements would jeopardize the viability of the employer but, until these regulations are issued, employers with less than 500 employees should assume that they are subject to its provisions. The law is a short-term law and the provisions that are most likely to impact small businesses take effect on April 2, 2020 and expire on December 31, 2020. These provisions are as follows:

Emergency sick leave:

- Employers will need to provide paid sick leave to all employees who cannot work due to the coronavirus.
- Only employees who are sick, showing symptoms and/or quarantined, are caring for the sick, or are caring for children who can't go to school or daycare, are entitled to take paid sick leave.
- Full time employees are to receive 80 hours of sick leave.
- Part time workers are to receive paid leave equivalent to their average hours worked in a two-week period.
- Leave must be used in 2020 and doesn't carry over to 2021.
- Leave is at the worker's normal hourly rate.
- If the employee uses leave because they are sick, showing symptoms and/or quarantined, the sick leave is capped at \$511 per day and \$5,110 in the aggregate.
- If the employee uses leave to care for someone who is sick, or a child whose school or daycare is closes, the sick leave is capped at \$200 per day and \$2,000 in the aggregate.
- Employers can't force employees to use up their vacation or other paid leave before using the sick leave.
- Employers can't fire someone for using sick leave.
- Employers must post a notice informing employees of the law.

Emergency family leave:

- Requires employers to provide up to 12 weeks of FMLA leave for employees who have been off the job for at least 30 days to care for a child whose school or daycare is closed due to coronavirus.
- The first 10 days of leave can be unpaid, although a worker could opt to use accrued vacation days or other available paid leave for those days.

- For subsequent days of leave, workers will receive a benefit from their employers equal to at least two-thirds of their normal pay rate.
- The paid leave is capped at \$200 per day and \$10,000 in the aggregate.
- If employers have more than 25 employees, they must restore the employee to their former position.
- If employers have less than 25 employees, they don't need to restore the employee if economic conditions prevent it and you have made "reasonable efforts" to restore the employee to an equivalent position.
- Leave must be used in 2020 and doesn't carry over to 2021.

Tax provisions

- The payments that employers make under the sick leave and emergency family leave provisions are not subject to the 6.2 percent social security payroll tax.
- Employers will receive a payroll tax credit for sick leave payments made for up to 10 days per quarter per employee.
- Tax credits for sick leave payments are capped at \$511 per day while the employee is receiving paid sick leave to care for himself or herself, or \$200 if caring for a family member or child whose school has closed.
- Tax credits for family leave credit for each employee are capped at \$200 per employee per day, and \$10,000 in the aggregate, which means that the full amount of the family leave is then credited back to employers.

Likely Impacts

The sick leave and family leave provisions are essentially a way for the federal government to get money into affected people's pockets immediately without setting up a new bureaucracy to do it. Under the Act, businesses pay leave to their employees and, assuming they resume business and have future payroll tax obligations, the leave payments are likely to be fully repaid by the federal government in the form of payroll tax credits.

The downside for small businesses is that it impacts them immediately by forcing them to essentially loan money to the federal government by making leave payments to their employees, which will only be repaid if the employer continues to have payroll tax obligations.

It is important to note that employees are only be entitled to paid leave if they could not work due to coronavirus and that payment obligations do not extend beyond December 31, 2020 and do not carry forward to 2021.

The sick leave provision includes fairly low caps and employees making less than \$25 per hour will not reach them. For example, an employee making \$15 per hour would only receive \$1200 in sick leave and a maximum of \$4800 in family leave.

The family leave provisions are limited to child care situations and employee without children are not eligible to receive it.

Sick and family leave payments aren't subject to the employer portion of payroll taxes and small businesses should contact their payroll providers when leave is claimed.

There are other tax related provisions and small businesses should consult with their accountants about the Act and how it impacts them from a tax perspective.

There are certain exemptions for health care providers and emergency responders and business in these fields should consult with an attorney to determine whether they are exempt.

The US Department of Labor has posted a Questions and Answers page on the FFCRA and it may be found at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>. They also posted the mandatory notice and it may be found at https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Small businesses should be monitoring the implementation of the Act and, in particular, the if and when the DOL issues regulations regarding exemptions for companies who have less than 50 employees.

I hope that this article is helpful and will post an update as soon as additional information is available. I am also happy to answer specific questions and may be reached via email at mike@laconialaw.com, through LinkedIn, or via phone at 603-528-0023.

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