

Federal Government Requires Small Businesses to Provide Paid Leave During COVID-19 Outbreak

By Scott Mirsky

On March 18, 2020, Congress passed the Families First Coronavirus Response Act ("FFCRA") and the President promptly signed the legislation. While many questions remain unanswered, the law will go into effect on **April 2, 2020**.

We have prepared the following summary that highlights the major points of the legislation as it relates to an employer's obligations to provide paid leave. A flyer containing these highlights can be downloaded [here](#).

Families First Coronavirus Response Act

(Effective April 2, 2020)

Addresses leave benefits in two ways:

Amends the Family and Medical Leave Act (FMLA)

- Covers employers with 500 or fewer employees
- Employee must be employed for 30 days to be eligible
- Applies when employee needs leave for the following COVID-19 reasons:
 - School or child-care closure
- Employee entitled to 12 weeks of leave
 - First 10 days may consist of unpaid leave (subject to other leave benefits that employee may elect to use)
 - Then employee must be paid at 2/3 the employee's regular pay rate up to \$200 per day per employee (\$10,000 aggregate per employee)
- Employers with fewer than 50 employees can apply for an exemption
 - Standard: Jeopardizes the viability of the business as a going concern

New Federal Paid Sick Leave

- Covers employers with 500 or fewer employees
- Employee is covered from the first day of hire
- 80 hours of paid sick leave for these COVID-19 issues (*pro rata* for part-time employees)
 - Self-isolation (paid at regular rate)
 - Diagnosis of COVID-19 (paid at regular rate)
 - Compliance with an order to stay away from work due to the employee's exposure to COVID-19

- or employee's symptoms of COVID-19 (paid at regular rate)
- Care for family member who is self-isolating or has COVID-19 (paid at 2/3 regular rate)
- Care for a child whose school or child care has closed (paid at 2/3 regular rate)
- Caps on paid leave
 - For the first three bullets above
 - \$511 per day per employee (\$5,110 per employee)
 - For the last two bullets above
 - \$200 per day per employee (\$2,000 per employee)
- Employers with fewer than 50 employees can apply for an exemption
 - Standard: Jeopardizes the viability of the business as a going concern

Of important note, this legislation does not create an automatic obligation to pay all employees if a business is closed due to the public health emergency. However, some state (or local) sick and safe leave laws may require such an obligation. For example, under the Montgomery County Sick and Safe Leave Law, the closure of a business during a public health crisis is a qualifying event that triggers mandatory paid leave.

If you have questions regarding how to handle leave issues during the current spread of the Coronavirus, please contact the employment attorneys at Paley Rothman.