



## THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA): HOW IT MAY IMPACT YOUR BUSINESS

*By Gregory J. Norys*

Congress and the President have come together to provide relief to Americans affected by COVID-19. The first piece of legislation, called the “Families First Coronavirus Response Act” (“FFCRA”) contains several major provisions, three of which directly impact employers with up to 500 employees. Two components require paid leave (with available tax credit/ refund to employer) for certain Coronavirus related grounds through December 31, 2020 (the “expiration date”).

This article will summarize the paid leave components of the law.

### Who is Covered

First, the FFCRA defines who is and is not covered. **Covered Employers** includes employers with fewer than 500 employees. The Secretary of Labor has authority to issue exemptions for employers with less than 50 employees, and we expect additional guidance to be published soon.

### Notice to be Given

The Act requires employers to post and keep posted on the premises a Notice to be prepared by the Secretary of Labor the requirements of the Act. This Notice has not yet been published but is to be prepared no later than seven days after enactment of the Act. It is unknown how many employees may see the notice as many governments, state and local, have issued shelter in place orders.

### Benefits Available – Emergency Paid Sick Leave (EPSL)

EPSL is immediately available to all employees with no eligibility or time worked requirements, who are within one of the following categories:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19. The shelter in place order recently issued by several State and local governments may suffice.
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 subparagraph 1, above, or has been advised as described in paragraph 2, above.
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 or other public health emergency.
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.

### **Hours of paid leave**

The hours for which an employee will receive leave differ depending on whether the employee is full or part time. Full time employees will receive up to 80 hours of benefits. Part time employees will receive their average hours for a two-week period where the hours are fixed, but if not fixed, they will be calculated using the following formula:

1. Calculate average daily hours over the prior 6 months as of date of leave including paid time off of any kind and then use those hours to calculate 2- weeks' worth of hours; or,
2. If employee has not worked 6 months, then use "the reasonable expectation of employee at time of hire" they would normally be scheduled to work.

### **How Pay Will Be Calculated**

Where an employee is required to miss work as a result of the reasons set forth in paragraphs 1-3, above, the employee may receive their regular rate of pay under the Fair Labor Standards Act ("FSLA"), which is essentially a weighted average of all forms of pay (hourly, non-discretionary bonus, commission, etc.). This is not just a straight time hourly rate, unless hourly wage is the only wage employee is paid.

Where the employee is required to miss work due to the reasons set forth in paragraphs 4-6, above, the employee will receive two-thirds (2/3) of their regular rate of pay. The law allows the employer to pay less for those reasons versus the first three qualifying EPSL reasons.

### **The Maximum EPSL Wages Paid**

For the reasons set forth in paragraphs 1-3, above, the maximum rate of pay is \$511/day per person; \$5,110 total/aggregate per person. For all other employees, the maximum rate of pay is \$200/day per person; \$2,000 total/aggregate per person

## Other Provisions

The other provisions include the following:

1. EPSL is in addition to other benefits required by law or employer policy/employee handbook (e.g. sick leave policies, PTO/vacation policies).
2. The employee must use it or lose it; there is no carryover.
3. The employer cannot require employee to find replacement coverage and cannot require employees to use other leave prior to accessing EPSL.
4. An employer may not retaliate against an employee who seeks benefits under the EPSL.
5. An employer must reinstate the employee after leave, subject to the following exceptions:
  - a. There are exceptions related to economic hardship/other reasons (call us or an experienced employment lawyer if you think you don't want to return an employee to work);
  - b. If exception applies, employer has ongoing obligations to essentially recall or offer alternative positions to employee (again call us or an experienced employment lawyer to discuss along with whether an exception applies in the first place).

The FFCRA also authorizes the Secretary of Labor to promulgate regulations allowing health care providers and emergency response employers to opt out, and to exempt employers of less than 50 people when the imposition would jeopardize the business as a going concern. However, for now, those regulations are not in place and all employers must comply until such regulations go into effect.

## Other Questions You or Your Employees May Have

### 1. How Does Employer Pay For The New Paid Sick Leave and FMLA Expansion?

There are refundable tax credits for employers who are required to pay out under the Act. Contact your accountant for information on how this will be processed, and we expect additional guidance for employers to be published soon.

### 2. How Does Unemployment Overlap?

The Bill would make it easier for individuals to receive unemployment insurance (UI) benefits if they are not eligible for paid leave but are still unable to go to work because of the Coronavirus. However, with the California Governor passing the "Stay at Home" order, all workers in California may fall under the first prong of leave eligibility. As for those in other states, it depends on why

the employee is required to miss work. The legislation builds on the guidance already provided by the Department of Labor by waiving the able and available UI eligibility requirements, as well as the one-week waiting period required before an individual can apply for UI benefits.

### **COUNSEL TO MANAGEMENT**

The new emergency law raises a lot of unanswered questions. For those reasons, you should seek the assistance of legal counsel before navigating if you have specific questions or a need arises. Employers should also be prepared to field questions about this very complex, very new, and very confusing law.

More will become known in the coming days. We hope to have answers for you then. If you have any questions now about this article, please feel free to contact the author [at gnorys@ch-law.com](mailto:gnorys@ch-law.com) or [info@ch-law.com](mailto:info@ch-law.com).

For a complete copy of the FFCRA, go to <https://www.congress.gov/bill/116th-congress/house-bill/6201>

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