

FAMILIES FIRST CORONAVIRUS RESPONSE ACT SUMMARY

Earlier this week, the Congress passed the Families First Coronavirus Response Act (the “Act”), which was signed into law by President Trump on March 18, 2019. The Act will become effective on April 2nd, and will sunset on December 31, 2020. While the Act is comprised of economic stimulus plans and a variety of new laws, this Summary will focus upon the employment laws that may impact local governments. Specifically, this Summary will address the following components of the Act: (1) the Emergency Family and Medical Leave Expansion Act; (2) the Emergency Paid Sick Leave Act; and (3) the Emergency Unemployment Insurance Stabilization and Access Act.

I. EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

Who is a COVERED EMPLOYER and EMPLOYEE?

The Act significantly expands the definition of which employers and employees are covered under the Act. Previously, an employee must have worked for the employer for the previous twelve months, worked at least 1,250 hours during that period, and worked at a location where the employer had at least 50 employees within 75 miles of the worksite. Now, however, for purposes of eligibility for Emergency FMLA Leave all employers with **fewer than 500 employees** are covered, and an eligible employee need only work for the employer for **at least 30 days** prior to the designated emergency leave.

Are there any EXEMPTIONS available?

Yes. The Act provides that an employer of an employee who is a “health care provider or an **emergency responder**” may elect to exclude such employee from the Act. These terms are not defined in the Act. The Act further provides that the Secretary of Labor may adopt regulations to specifically exclude these categories of workers from the definition of eligible employee. Until the Secretary of Labor takes action, however, the local government “may elect” to exclude “emergency responders” from coverage under the Emergency FMLA Act. In addition, the Secretary of Labor is authorized to promulgate regulations to exempt small businesses with fewer than 50 employees from the requirements if compliance would “jeopardize the viability of the business as a going concern.”

What are the REASONS justifying leave?

Emergency FMLA Leave is available for a singular purpose: to allow an employee, *who is unable to work or telework*, to care for the employee's child under 18 years of age if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency.

What is the DURATION of the Leave?

An employee who has been employed for at least 30 days (before the first day of leave) may take up to **12 weeks of job-protected leave**.

Is the leave PAID or UNPAID?

The **first ten days of the leave is unpaid**, unless an employee elects to substitute any accrued paid leave to cover some or all of the 10-day period. After the 10-day period, the employer must pay full-time employees **two-thirds of the employee's regular rate of pay** for the number of hours the employee would otherwise be normally scheduled to work.

Are there any CAPS on the Paid Leave?

Yes. This pay entitlement is limited to no more than **\$200 per day** and **\$10,000 in the aggregate** per employee.

Can the Emergency Paid Sick Leave (discussed below) be used during the FIRST TEN DAYS?

Yes.

If we have a NO STACKING policy can we require the employee to utilize accrued leave during the FIRST TEN DAYS?

Not recommended at this time. The new Act says that an employee "may elect" to utilize accrued leave during the first ten days. As such, it is recommended that an employer not require an employee to utilize accrued paid leave during the first ten days to avoid stacking

of leaves. This could change once the Secretary of Labor issues regulations that further interpret the Act and provides for detailed practices.

How do you calculate the Paid Leave for NON-FULL TIME EMPLOYEES?

Employees who work part-time or irregular schedules should be paid based upon the average number of hours the employee worked for the six months prior to taking the Emergency FMLA. If an employee has worked less than six months prior to taking the Emergency FMLA, the pay should be calculated based upon the employee's reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.

Is there a JOB RESTORATION requirement?

Yes. Employers with 25 or more employees will have the same obligations as under traditional FMLA to restore an employee's job to the same or equivalent position upon return to work. Employers with fewer than 25 employees may be excluded from restoration requirements under certain circumstances if the position is no longer available due to an economic downturn or other circumstances caused by a public health emergency, but reasonable efforts must still be made and the employer must maintain contact with the employee for up to a year following the employee's leave in an effort to restore the employee to his/her equal or equivalent position.

II. EMERGENCY PAID SICK LEAVE

Who is a COVERED EMPLOYER and EMPLOYEE?

The Act applies to all employers with **fewer than 500 employees**. There is **no minimum period of employment** for an employee to be eligible.

Are there any EXEMPTIONS available?

Yes. The Act provides that an employer of an employee who is a "health care provider or an **emergency responder**" may elect to exclude such employee from the Act. These terms

are not defined in the Act. The Act further provides that the Secretary of Labor may adopt regulations to specifically exclude these categories of workers from the definition of eligible employee. Until the Secretary of Labor takes action, however, the local government “may elect” to exclude “emergency responders” from coverage under the Emergency Paid Sick Leave Act. In addition, the Secretary of Labor is authorized to promulgate regulations to exempt small businesses with fewer than 50 employees from the requirements if compliance would “jeopardize the viability of the business as a going concern.”

What are the REASONS justifying leave?

Emergency Paid Sick Leave is available for the following six 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 health care provider to self-quarantine due to COVID-19 concerns;
- (3) The employee is experiencing COVID-19 symptoms and seeking medical diagnosis;
- (4) The employee is caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
- (5) The employee is caring for the employee’s child if the child’s school or place of care is closed or the child’s care provider is unavailable due to a public health emergency; or
- (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.

What is the DURATION of the Paid Sick Leave?

A full-time employee is granted **eighty (80) hours of paid sick leave**. A part-time employee is granted the number of hours equal to the number of hours that such employee works, on average, over a two-week period. For example, if a part-time employee works 15 hours each week, the employee is entitled to 30 hours of paid sick leave.

How do you Calculate the PAYMENTS for Paid Sick Leave?

The employer must pay the employee’s **regular rate of pay** if Emergency Paid Sick Leave is being taken pursuant to qualifying reasons (1), (2), or (3) above; or at **two-thirds** the

employee's regular rate of pay if the Emergency Paid Sick Leave is being taken pursuant to qualifying reasons (4), (5), or (6).

Are there any CAPS on the Paid Leave?

Yes. This pay entitlement is limited to no more than **\$511 per day** and **\$5,100 in the aggregate** per employee when on leave for self-care pursuant to reasons identified in (1), (2), and (3) above; and limited to no more than **\$200 per day** and **\$2,000 in the aggregate** per employee when on leave for other reasons identified in (4), (5), and (6) above.

Can the Emergency Paid Sick Leave be used during the FIRST TEN DAYS of the Emergency FMLA Leave?

Yes.

Does Emergency Paid Sick Leave ACCRUE?

No. The Act requires that the leave be available for “**immediate use**” for each employee “regardless of how long the employee has been employed by an employer.” As such, it is recommended that a separate leave bank for Emergency Paid Sick Leave be created for each employee as of April 2nd, which is the effective date of the Act.

Can we require an employee to UTILIZE OTHER PAID LEAVE before the Emergency Paid Sick Leave?

No. The Act is clear that an employer **may not require** an employee to use other paid leave before taking advantage of the 80 hours of Emergency Paid Sick Leave.

Does the Emergency Paid Sick Leave CARRY OVER if not used?

No. Emergency paid sick leave **will not carry over** to the following year.

Does the Emergency Paid Sick Leave need to get PAID OUT upon separation of an employee?

No. The award of Emergency Paid Sick Leave is for specific purposes. As such, if a qualifying reason is not applicable and an employee separates, there is **no obligation to pay out sick leave** as you might provide for under your policies with respect to other traditional paid sick leave.

III. EMERGENCY UNEMPLOYMENT INSURANCE STABILIZATION AND ACCESS ACT OF 2020

This section of the Act provides \$1 billion in emergency grants in 2020 to states for purposes of activities related to unemployment insurance benefit processing and payment, under certain conditions. **Relatedly, the Georgia Department of Labor adopted an emergency rule that requires employers to file partial claims “with respect to any week during which an employee works less than full-time due to a partial or total company shutdown caused by the COVID-10 public health emergency.”** The Georgia DOL has stated that this applies to both full-time and part-time employees. While a part-time employee will obviously always work less than full-time, the rule indicates that a claim for a part-time employee would only be filed if the employee’s hours were reduced below the number of hours the part-time employee normally works.

IV. CONCLUSION

Please note that the legal landscape has been changing rapidly throughout the evolution of this pandemic virus, and you are advised to continue to seek updates. In particular, it is anticipated that the Secretary of Labor will promulgate regulations pursuant to the authorizations in the Act to detail certain of these employment laws, provide definitions and exemptions, and otherwise provide for practice guidance. As always, you are advised to consult with your County Attorney on any specific questions and applications of the laws. If you are an ACCG-insured member, you are also welcome to contact Angela Davis through the ACCG Helpline by visiting the ACCG website or by email to adavis@jarrard-davis.com or by phone at Jarrard & Davis, LLP at 678.455.7150.

