



Families First Coronavirus Response Act

New York State PHCC Review

On March 19, President Trump signed the Families First Coronavirus Response Act (FFCRA) into law. This is one of several legislative packages working through Congress designed to handle health care and economic fallout from the ongoing coronavirus pandemic. This law is divided into eight divisions pertaining to a variety of issues. This review is designed to highlight those divisions that pertain to our members and their employees.

These provisions apply to all employers with fewer than 500 employees, although employers with fewer than 50 employees may later be deemed exempt by the Secretary of Labor through subsequent regulations if the Act would jeopardize the business's viability.

This law takes effect on April 2, 2020 and lasts through Dec. 31, 2020

Emergency Paid Sick Leave Act

- **Requires employers to provide two weeks' worth of paid sick leave if employees are unable to work because they're (1) subject to quarantine or isolation at the behest of a government entity or health care provider, (2) are experiencing symptoms of COVID-19 and seeking medical diagnosis, (3) are caring for someone (does not have to be family) who is in quarantine or isolation and, (4) /or have children in schools/care centers that have closed.**
- All employees are eligible regardless of how long they have been employed.
- Full-time employees receive 80 hours of paid sick leave. Part-time employees receive the equivalent of the number of hours they would work, on average, during a two-week period.
- An employer cannot require employees to find a replacement worker for themselves or require them to use other paid time off.
- Employers may not discharge, discipline, or discriminate against any employee who (a) takes paid sick leave or (b) has filed a complaint or proceeding or testified in any such proceeding related to this Act. There are civil penalties in place for employers that do violate these provisions.
- For qualifying reasons 1 and 2 (above), eligible employees will receive paid sick leave at their regular rate, except that in no event shall the amount paid exceed \$511 per day and \$5,110 in total.

- For qualifying reasons 3 and 4 (above), eligible employees will receive paid sick leave at two-thirds of their regular rate, except that in no event shall the amount paid exceed \$200 per day and \$2,000 total.
- Paid sick leave does not carry over from one year to the next, and paid sick time ceases beginning with an employee's next scheduled work shift immediately following termination of the need for paid sick time (i.e., qualifying need).
- All eligible employees may use paid sick time beginning on April 2.
- Employers may not require eligible employees to first use other paid leave provided by the employer before using paid sick leave under the Act, so this leave is in addition to any paid sick leave or PTO currently provided by employers.
- Employers may require employees to follow reasonable notice procedures to continue receiving such paid sick time after the first workday (or portion thereof) an employee receives paid sick time under this Act. In other words, employers may not require employees to provide advance notice prior to the first workday on which the employee takes paid sick leave under the Act.
- Employers must post a notice that advises employees of their rights under the Act. The Secretary of Labor is required to create a notice by March 25.
- The Act provides that employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan are provided with leave for coronavirus-related reasons.

Emergency Family and Medical Leave Expansion Act

- **Provides eligible employees whose child's school or place of care has closed due to the COVID-19 public health emergency with a new federal source of paid leave.**
- Under normal circumstances, the Family and Medical Leave Act applies only to employers with 50 or more employees, applies only to employees who have worked for at least 12 months and who had worked at least 1,250 hours during that preceding 12 months, and provides unpaid leave for designated reasons, such as the employees own serious health condition, to care for a family member with a serious health condition, or to care for a newborn infant or an adopted child or foster child placed with the employee.
- On a temporary basis, the Emergency FMLA Expansion Act amends the FMLA and creates a new leave entitlement. For purposes of the new entitlement only, the Act alters the definition of employer to include all employers with fewer than 500 employees, and expands the definition of a covered employee to include all employees who have worked for covered employers (i.e., those with less than 500 employees) for at least 30 days. Again, the Secretary of Labor has the authority to exempt small businesses with fewer than 50 employees if the Act would jeopardize a business's viability.
- An eligible employee may take up to 12 weeks of leave if he/she is unable to work (including telework) because the employee must care for his/her child who is under 18 years of age and whose school or place of care has closed due to the COVID-19 public health emergency.
- A qualifying employee may take up to 12 weeks of leave. The initial 10 days of leave are unpaid, but the employee may elect to use his/her accrued paid sick leave and/or accrued vacation during this otherwise unpaid period. After the initial 10-day period, an employee is entitled to receive from the employer two-thirds of his/her normal wages for the

number of hours he/she would be regularly scheduled to work, up to a maximum of \$200 per day and \$10,000 in total.

- All eligible employees may apply for expanded FMLA leave beginning on April 2.
- If the necessity for leave is foreseeable, the employee must provide the employer with “such notice of leave as is practicable.”
- For employers with 25 or more employees, an employee returning from expanded FMLA leave is entitled to reinstatement to the same or an equivalent position. For employers with fewer than 25 employees, an employee returning from expanded FMLA leave is entitled to reinstatement to the position held by the employee when the leave commenced unless that position does not exist due to economic conditions or other changes in operating conditions caused by the public health emergency. In such case, the employer must make reasonable efforts to restore the employee to an equivalent position, and if those efforts fail, make reasonable efforts for at least a year to contact the employee if an equivalent position becomes available.
- The Act provides that employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan may access emergency paid leave.

Tax Credits to Offset

- **The structure of the bill is designed so that employers can offset the above-provided benefits via tax credits.**
- **Payroll Tax Credit: The bill provides a refundable tax credit worth 100 percent of qualified public health emergency leave wages (FMLA Expansion) and qualified paid sick leave wages (Emergency Paid Sick Leave) paid by an employer for each calendar quarter through the end of 2020. The tax credit is allowed against the tax imposed under the employer portion of Social Security payroll taxes.**
- The bill allows employers to take tax credits for qualified public health emergency leave wages and qualified sick leave wages:
 - Credit Amount for Public Health Emergency Leave Wages. The amount of qualified public health leave wages taken into account for each employee is capped at \$200 per day and \$10,000 for all calendar quarters.
 - Credit Amount for Sick Leave Wages. In instances when an employee receives paid sick leave because they are subject to a quarantine or isolation order, have been advised by a health care provider to self-quarantine, or are experiencing coronavirus symptoms and seeking medical diagnosis, the amount of qualified sick leave wages taken into account for each employee is capped at \$511 per day.
 - In instances when an employee receives paid sick leave because they are caring for another individual or child or because they are experiencing another substantially similar illness (as specified by HHS) the amount of qualified sick leave wages taken into account for each employee is capped at \$200 per day.
 - In determining the total amount of an employer’s qualified sick leave wages paid for a calendar quarter, the total number of days that the employer can take into account with respect to a particular employee for that quarter may not exceed 10 days minus the number of days taken into account for that employee for all previous quarters.

- Credit for Health Plan Expenses. Under the bill, the public health emergency leave and paid sick leave credits would be increased to include amounts employers pay for the employee's health plan coverage while they are on leave. Specifically, the bill allows for the credit amounts to be increased by the amount of the employer's group health plan expenses that are "properly allocated" to the qualified emergency leave and sick leave wages. Health plan expenses are "properly allocated" to qualified wages if made on a pro rata basis (among covered employees and periods of coverage).
- Refundability of Excess Credit: The amount of the paid sick leave credit that is allowed for any calendar quarter cannot exceed the total employer payroll tax obligations on all wages for all employees. If the amount of the credit that would otherwise be allowed is so limited, the amount of the limitation is refundable to the employer.
- Limitation on Tax Credits: Employers may not receive the tax credit if they are also receiving a credit for paid family and medical leave under the 2017 Tax Cuts and Jobs Act (P.L. 115-97). Employers would instead have to include the credit in their gross income.

Unemployment Provisions

- Boosts unemployment benefits, with nearly \$1 billion in state grants to cover processing and paying unemployment insurance.
- States are directed to demonstrate steps toward easing eligibility requirements and expand access to unemployment compensation for claimants directly impacted by COVID-19.
- The legislation also appropriates funds for states that aim to establish work-sharing programs that permit employers to reduce employee hours rather than laying them off. Under such programs, employees would receive partial unemployment benefits to offset the wage loss.

Public Health Provisions

- **The bill strives to make coronavirus testing free for everyone without cost-sharing mechanisms like co-pays or deductibles.** This includes individuals covered by Medicare, Medicaid, Indian Health Services, CHIP, the VA, or Tricare.
- Nearly \$1 billion is being allocated to food nutrition programs like SNAP, WIC, and an emergency food assistance program that will last through September 2021. Various waivers will expand who qualifies for assistance, removes work/work-search requirements, and accounts for school closures.

How is PHCC helping me?

- This is one of the most dynamic and fluid times in American history in terms of public safety and economic legislation. The New York State PHCC is monitoring all developments in New York State that may impact your businesses, employees, and the construction industry during this time. In addition, National PHCC is providing updates on legislation and events occurring in Washington.

- As far as the Act described above is concerned, the NYSPHCC is working to:
 - Monitor and provide the Secretary of Labor's provided notice employers must provide to employees about the provisions of this Act.
 - Working with National PHCC to determine exemptions the Secretary of Labor still must make that would impact member businesses and organizations.
 - Monitoring and providing feedback on developments as decision-makers sort the workforce into essential and non-essential personnel which may impact what businesses can remain open, which employees can commute to work, and which projects may continue or must be halted.
 - Analyzing legislation designed to assist employers and employees both in terms of their safety during this public health crisis and their economic security during this unprecedented global shutdown.
 - Determining long-term impact on the trades, the construction industry, and ongoing workforce development projects as we proceed through this immediate crisis and beyond.
- Troubleshooting legislative, regulatory, and safety issues that members may be having as this situation unfolds.
- The NYSPHCC is committing to providing its members with as many resources and as much information on this crisis as it pertains to the employer-employee relationship, job site safety, and the general situation as we can.

Credit: Brett Sebastian, Oklahoma PHCC