

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Prepared by the PSEA Legal Division

Updated as of April 1, 2020

Introduction

On March 18, 2020, President Trump signed the **Families First Coronavirus Response Act** (“FFCRA”). This package of legislation consists of several distinct parts. This alert focuses on two parts of the FFCRA – **the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.**

The Emergency Paid Sick Leave Act

This Act generally requires (i) any public agency or other non-private entity¹ or (ii) any private entity with fewer than 500 employees (unless the private entity has less than 50 employees and obtains a waiver) to provide up to two weeks of paid sick leave to employees who are unable to work (or telework) due to one of the reasons listed below. *Employees cannot be required by their employer to exhaust other leave before utilizing this paid sick leave.*

Employees of covered employers are eligible for this emergency paid sick leave if one of the following reasons prevents them from being able to perform assigned work, either under normal circumstances at their normal worksite or by means of telework:

1. They are subject to a federal, state, or local quarantine or isolation order related to COVID-19.
2. They have been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. They are experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. They are caring for an individual who is subject to a quarantine or isolation order or who has been advised to self-quarantine.
5. They are caring for their children because schools are closed, or child care is not available, due to COVID-19 precautions.

¹ This language appears to broadly cover Pennsylvania’s school districts, intermediate units, colleges in the State System of Higher Education, community colleges, other public school entities, and the Commonwealth itself (e.g., state correctional institutions).

6. They are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of the Treasury and Labor.

Employers may exclude employees who are health care providers or emergency responders from obtaining this emergency paid sick leave.

Full-time employees are entitled to 80 hours of emergency paid sick leave. Part-time employees are entitled to the emergency paid sick leave based on the average number of hours they work over a two-week period.² Overtime hours that a qualifying employee would have normally been scheduled to work must be included in calculating the amount of emergency paid sick leave, but the available leave is always capped at 80 hours over a two-week period.

There are different pay rates: employees who are quarantined or experiencing COVID-19 symptoms (*i.e.*, reasons 1-3 above) are paid at their regular rate of pay, not to exceed \$511/day or \$5,110 in total, while employees using leave to care for others or under other conditions specified by federal agencies (*i.e.*, reasons 4-6 above) are paid at a rate of two-thirds of their regular rate of pay, not to exceed \$200/day or \$2,000 in total.

The paid sick leave is available for use immediately, regardless of the length of the employee's tenure with the employer. The paid sick leave can be taken intermittently, but only if the employee is teleworking or the employee is taking the leave paid sick leave to care for a child because schools are closed or child care is not available (*i.e.*, reason 5 above). In addition, the employer must agree to allow the leave to be used intermittently.

The Emergency Family and Medical Leave Expansion Act

This Act also applies to state and local government employers and to private employers with fewer than 500 employees. Again, employers with fewer than 50 employees may seek waivers from the provisions of this Act.

This Act requires employers to provide employees with paid family leave when employees are unable to perform assigned work (or telework) due to the need to care for a minor child whose school is closed for public health reasons related to the coronavirus.

This Act simply adds this situation to the existing categories of FMLA-qualifying needs; therefore, the total available leave for this situation is the same as under the FMLA (*i.e.*, 12 weeks in a given 12-month period). It does *not* provide a purely additional 12 weeks of FMLA leave (*i.e.*, 24 weeks in a given 12-month period).

² If a part-time employee's normal hours scheduled are unknown, or her schedule varies, the employer uses a six-month average to calculate her average daily hours. If this calculation cannot be made because the employee has not been employed for at least six months, the employer uses the number of hours the parties agreed the employee would work upon her hire. If there was no such agreement, the employer uses the average hours per day that the employee was scheduled to work over the term of her employment. If eligible, the part-time employee may take paid sick leave for this number of hours per day over a two-week period.

The first 10 days of emergency FMLA leave are unpaid. During these first 10 days, however, an employee on emergency FMLA leave may elect to substitute any accrued vacation, personal, or sick leave (including emergency sick leave provided by the Emergency Sick Leave Act) for the unpaid leave. The employer may allow, but cannot require, such a substitution of paid time off. After the first 10 days, employees on this leave are paid two-thirds of their regular rate of pay, not to exceed \$200/day or \$10,000 in the aggregate.

Employers with fewer than 25 employees do not have to reinstate an employee on this leave if their position no longer exists due to operation changes resulting from a public health emergency. Again, employers may exclude employees who are health care providers or emergency responders from obtaining this emergency paid sick leave.

Emergency FMLA leave is available for immediate use by employees who have been employed by the employer for at least 30 days. (This is an expansion of FMLA coverage, as regular FMLA leave is limited to employees who have been employed by the employer for at least 12 months and who have worked at least 1,250 hours during the previous 12 months.) The emergency FMLA leave can be taken intermittently, in any increment, if the employer agrees to it.

Effective Date

The provisions described above take effect on April 1, 2020, and apply to leave taken between April 1, 2020 and December 31, 2020. These provisions sunset on December 31, 2020, after which time these benefits are no longer available.

Implementation

PSEA local associations should be on the alert for and obtain copies of any policies or guidance provided by their employers related to both types of leave. PSEA members in need of such leave should contact their UniServ representative for assistance.

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