

UPDATE ON THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

On March 18, 2020, the U.S. Senate passed the House version of the “Families First Coronavirus Response Act” and the President signed the act into law. The Act will take effect on April 2, 2020 and remain effective until December 31, 2020. The Act contains two distinct bills addressed below:

Paid COVID-19 Sick Leave.

The legislation requires governments and private businesses with fewer than **500 employees** to provide up to two weeks of **paid sick leave** for employees for the following uses:

1. To self-isolate because the employee is diagnosed with coronavirus.
2. To obtain a medical diagnosis upon experiencing symptoms of coronavirus.
3. To comply with recommendation or order by a public official or health care provider because the physical presence of the employee would jeopardize the health of others because of exposure to coronavirus or exhibiting of symptoms.
4. To care for or assist a family member who is self-isolating because of diagnosis, experiencing symptoms, or who is subject to an order that the presence of that person in the community would jeopardize the health of others due to exposure to the coronavirus or symptoms.
5. To care for the child of an employee if school or place of care is closed due to coronavirus.
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.

Who Is Covered? Available to any employee regardless of length of employment.

Full-Time Employees. Full-time employees are entitled to 80 hours of paid sick time.

Part-Time Employees. Part-time employees are entitled to the number of hours that such employee works on average over a 2-week period.

Other Sick Leave. An employer may not require an employee to use other paid leave provided by the employer before using paid sick time under this Act.

Payment Caps. Paid-sick-leave benefits will be immediately available when the law takes effect on April 2, 2020 and are capped at \$511/day or \$5,110/total for reasons within 1-3 described above and \$200/day or \$2,000/total for reasons 4-6. Please note that pay is further limited to 2/3 the rate described above when the employee cares for a child or family member rather than themselves. This benefit will expire at the end of 2020.

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Emergency Family And Medical Leave Expansion Act.

Covered Employers. Employers with less than 500 employees.

Exempted. Small businesses with fewer than 50 employees may be exempted from the paid leave requirement when the imposition of such requirements would jeopardize the viability of the business as a going concern.

Covered Employees. Employees that have been employed for at least 30 days.

Exempted. Healthcare providers and emergency responders are exempt from the eligible employees.

Qualifying Event. Or the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

Unpaid Leave. The first 10 days of leave may consist of unpaid leave. An employee may elect to substitute any accrued vacation leave, personal leave, medical leave, or sick leave for unpaid leave. Most likely, however, is that the employee will elect to receive Paid Covid-19 Sick Leave discussed above.

Paid Leave. Employer is required to provide paid leave for the employee after the first 10 days of leave that is calculated based on either:

1. an amount that is not less than two-thirds of the employee's regular rate of pay; or
2. the number of hours the employee would otherwise be normally scheduled to work.

In no event shall the paid leave exceed \$200/day or \$10,000/total.

Restoration to Position. The requirement that an employer restore an employee to their same or equivalent position upon return shall not apply with respect to an employee of an employer who employees fewer than 25 employees if:

1. The position held by the employee when the leave commenced does not exist due to economic conditions or changes in employment operations that (a) affect employment; and (b) are caused by a public health emergency during the period of leave; AND
2. The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment.

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Tax Implications of Both Acts.

Business Tax Credits. Employers are provided as credit against the tax imposed under IRC 2111(a) an amount equal to 100% of the qualified sick leave wages paid by such employer. The credit is subject to caps on the qualified sick leave wages (ranging from \$200 to \$511 per day) and aggregate number of days to be taken into account. The credit shall not exceed the tax imposed.

Self Employed. Self-employed individuals are allowed a tax credit against the tax imposed by IRC Subtitle A in an amount equal to 100% of the qualified family leave equivalent amount with respect to the individual.

If you have questions about what to do with your business or company during the COVID-19 pandemic, call Capell & Howard at 334-241-8000 and ask for one of our employment lawyers: Christopher Weller, Barbara Wells, Brooke Lawson, Carla Gilmore, Mai Lan Isler, Faith Twiggs, or Blake Brookshire.

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