On March 14, 2020, the U.S. House of Representatives passed the Families First Coronavirus Response Act (H.R. 6201) in reaction to the novel coronavirus (COVID-19) outbreak. The Senate passed the same legislation on March 18, 2020 and President Trump signed the legislation into law on the same day.

- The Families First Coronavirus Response Act creates a number of separate sub-acts. This Alert focuses on two of those sub-acts: the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act.

**EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT**

The Emergency Family and Medical Leave Expansion Act amends the Family and Medical Leave Act of 1993 to allow an employee of an employer with fewer than 500 employees to take leave pursuant to a qualifying need related to a public emergency. In order for the employee to qualify, the employee must have been employed for at least 30 calendar days and be unable to work or telework because the employee must leave to care for the employee’s child under the age of 18 if the child’s school is closed or child care provider is unavailable due to a public health emergency.

If an employee chooses to take leave under this Act, then the first 10 days of such employee’s leave are unpaid unless the employee chooses to substitute accrued paid leave for the unpaid leave. The employer cannot force the employee to substitute paid leave, however. An employer shall provide paid leave for each day after the employee’s tenth day of leave. The employee may take up to 12 weeks of leave under this section of the Act.

The paid leave calculation for these subsequent days is based on an amount that is not less than two-thirds of an employee’s regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work. Yet, in no event shall such paid leave exceed $200 per day and $10,000 in the aggregate.

The employee is entitled to be restored to their former position upon return from leave. However, if the employer employs less than 25 employees and meets the following conditions, then the employee is not entitled to be restored to their previous position. The conditions for those small employers are:

- Employee takes leave pursuant to this Act;
- The employee’s position when leave commenced does not exist due to economic conditions caused by the public health emergency during the period of leave;
- The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced; and
- If such reasonable efforts fail, the employer makes reasonable efforts to contact the employee if an equivalent position becomes available. The contact period lasts one (1) year from the earlier of (a) the date on which the qualifying need related to a public health emergency concludes or (b) the date that is 12 weeks after the date on which the employee’s leave commenced.

**EMERGENCY PAID SICK LEAVE ACT**

The Emergency Paid Sick Leave Act requires employers of 500 employees or fewer to provide each employee who is unable to work or telework with paid sick leave due to the employee’s need for leave because:

1. The employee is subject to Federal, State, or local quarantine;
2. The employee has been advised by a health care 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 a person who is subject to quarantine or been advised to self-quarantine by a health care provider;
5. The employee is caring for their child because the child’s school is closed or child care provider is unavailable due to COVID-19 precautions.

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The employer of an employee who is a health care provider or an emergency responder may exclude such employee.

There is a limit to the required compensation and within the next 15 days the Secretary of Labor has been directed to provide further guidance on how to calculate the amount of required compensation for paid sick time.

That said, the limits imposed for the first three enumerated reasons above are that paid sick leave shall not exceed $511 per day and $5,110 in the aggregate. For the other two reasons, the paid sick leave shall not exceed $200 per day or $2,000 in the aggregate.

Full-time employees are entitled to 80 hours of paid sick time, and part-time or hourly employees are entitled to the specified amount of paid sick leave equal to the number of hours that the employee works, on average of a 2-week period. The paid sick time ends beginning with the employee’s next scheduled work shift after the need to use this leave has ended.

This paid sick leave must be available for immediate use regardless of how long the employee has been employed by an employer. The employer is barred from requiring an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick leave as provided under this Emergency Paid Sick Leave Act.

All employers are required to post and keep posted, in a highly visible location, a notice setting forth the paid sick leave available to employees under this Act. The Department of Labor will publicly provide a model of such notice within seven days of this Act.


**TAX CREDITS**

The Families First Coronavirus Response Act implements tax credits to assist employers. Among other credits, the Act includes a 100 percent payroll tax credit for qualified sick leave wages paid under the Emergency Paid Sick Leave Act and a 100 percent payroll tax credit for qualified family leave wages paid under the Emergency Family and Medical Leave Act.

The attorneys at Woods Rogers are continuously updating our legal blog with topics relating to the COVID-19 coronavirus outbreak. You can find these articles at woodsrogers.com/covid19.

In addition, Woods Rogers has created a Pandemic Response Group of attorneys who are available to answer any specific questions or concerns about your obligations or potential liabilities in a range of different practice areas, such as contract law, labor & employment, construction law, cybersecurity, tax and employee benefits, and commercial litigation. We stand willing and able to assist you during these difficult times.