
NEW COVID-19 RESPONSE BILL EXPANDS FMLA AND PROVIDES PAID SICK LEAVE

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On Wednesday, March 18, 2020, Congress overwhelmingly passed a bill which expands the Family Medical Leave Act, as well as, provides Paid Sick Leave to employees amid the COVID-19 pandemic. President Trump signed the bill into law Wednesday night.

EMERGENCY FAMILY MEDICAL LEAVE EXPANSION

The “Families First Coronavirus Response Act” expands the Family Medical Leave Act to apply to all employers with fewer than 500 employees. These employers must provide up to 12 weeks of job-protected FMLA leave. Companies with more than 500 employees are notably not mentioned in the bill. Employees qualify for family leave if they have been on payroll for 30 calendar days and require it for “a qualifying need related to a public health emergency.” The “qualifying leave” is related to COVID-19 in limited circumstances in which an employee is unable to work or telework because they need to care for a minor child, if that child’s school or child care facility was closed or made unavailable due to a public health emergency.

The bill also allows the Secretary of Labor under both sections to exempt small employers with less than 50 employees, if the employee’s required leave would jeopardize the existence of their business. The bill also allows under both section for an employer of health care or emergency first responders to be excluded.

If your business is covered by the bill, the first 10 days can be unpaid and the employer can substitute any accrued vacation leave, personal leave, or medical/sick leave for the first 10 days. However, the employer must provide *paid leave benefits* for the following 10 weeks to employees at a rate of not less than two-thirds (67%) of the employee’s usual regular rate, based on the number of hours the employee would have otherwise been scheduled to work. FMLA for all other purposes remains the same.

PAID SICK LEAVE

The new bill also provides paid sick leave for employees, without any waiting periods, if they are unable to work or telework because of the following reasons:

1. The employee is subject to a government quarantine or isolation order related to COVID-19;
2. The employee was advised by a healthcare provider to self-quarantine due to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking medical diagnosis;
4. The employee is caring for an individual (not limited to just family members) subject to or advised by a healthcare provider to quarantine or self-isolate;
5. The employee is caring for their child, if the child’s school or place of care is closed or the childcare provider is unavailable due to COVID-19 precautions; or
6. The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human services.

The new temporary bill also requires private employers and government workers with fewer than 500 employees to provide employees with 2 weeks of paid sick leave. This will equate to 80 hours for full time employees and the typical number of hours worked by part-time staff. The bill also provides a cap on paid leave to \$511 per day or \$5,110 aggregate when the leave is taken for reasons 1, 2, and 3 above. In addition the bill limits pay to 2/3 the employee regular rate of pay and caps the paid leave at \$200 per day or \$2,000 aggregate where leave is taken for reasons 4, 5, or 6. Similar to the FMLA's emergency leave benefits, employers of employees who are healthcare providers or emergency first responders may elect to exclude such employees from the Paid Sick Leave.

PAY AMOUNT

The bill also provides a cap on paid leave to \$511 per day or \$5,110 aggregate when the leave is taken for reasons numbered 1, 2 and 3 above. In addition, the bill caps paid leave at \$200 per day or \$2,000 aggregate where leave is taken for reasons numbered 4, 5, or 6. Similar to the FMLA's emergency leave benefits, employers of employees who are healthcare providers or emergency first responders may elect to exclude such employees from the FMLA entitlement.

TAX CREDIT

To cover of the cost of these temporary benefits, the bill provides employers with a tax credit, if the employer is required to offer the emergency FMLA or paid sick leave. The credit is applied to the tax the employer normally pays for each employee's Social Security. Talk with your tax professional for more guidance.

Sean Darke is a Partner in Litchfield Cavo's Chicago office. He focuses his practice on labor and employment issues and successfully defends businesses in all areas of employment and labor law, including wage and hour laws in both State and Federal court. Most recently, Sean has been named a Leading Lawyer in the area of Employment Law Management Side by *Leading Lawyers* annually since 2017. He can be contacted at Darke@LitchfieldCavo.com or 312.781.6554

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