

## **FEDERAL LAW**

On Wednesday, March 18, the Families First Coronavirus Response Act (the “COVID-19 Act”) became law. It goes into effect on April 2, 2020, and will expire on December 31, 2020.

In broad terms, the COVID-19 Response Act provides eligible employees leaves of absence and/or paid sick leave with respect to the coronavirus. These new provisions apply to most employers that employ fewer than 500 employees. This law does **not** apply to employers who employ 500 or more employees.

Federal tax credits will be available for employers who make the payments to employees required by this new law. Although employers can pay more than the dollar limits discussed below, the credits will be limited to the dollar caps set forth below. Nonprofits should consult with their accountants and payroll providers.

The Departments of Labor and Treasury are expected to issue guidance under this law.

### **Provides Paid Sick Leave for COVID-19 Related Illness (“PSL”)**

- This new provision applies to all employees, without regard to how long they have been employed.
- The law provides for 80 hours of paid sick time for full time employees and prorated paid sick time based on an average of part time employees’ hours worked in the six months prior to taking leave for the employer for the following reasons:
  1. the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
  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 an individual who is subject to an order as described (1) above or has been advised as described in (2) above;
  5. the employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or

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.
- The employee must be paid 100% of their regular rate of pay or the applicable minimum wage, whichever is greater. However, employers are only required to pay employees two-thirds of their regular rate of pay if they are using leave for reasons (4), (5), or (6) above. The amount of payment for sick leave for reasons (1), (2), or (3) above can be capped at \$511 per day and \$5,110 in the aggregate. If an employee is using leave to care for reasons (4), (5), or (6) above, then the amount of sick leave pay can be capped at \$200 per day and \$2,000 in the aggregate.
  - Employees cannot be retaliated against for the use this leave.
  - The Secretary of Labor is authorized to issue regulations to:
    - Exclude certain health-care providers and emergency responders from receiving this new PSL benefit.
    - Exempt small businesses with fewer than 50 employees from providing PSL for the fifth reason set forth above when providing such PSL would jeopardize the viability of the business as a going concern.
  - In addition, employers of employees who are health care providers (as that term is defined in the FMLA) or emergency responders may elect to exclude these employees from receiving this new PSL benefit.

### **Establishes Changes to the Family Medical Leave Act (“FMLA”)**

- The changes to FMLA establish a new category of leave under the FMLA: a leave for “a qualifying need related to a public health emergency related to COVID-19,” defined as when an employee is unable to work (or telework) due to a need for leave to care for the employee’s son or daughter who is under 18 years of age if the child’s school or place of care has been closed, or the child care provider of the child is unavailable, due to a public health emergency.
- Employees only need to have been employed with the employer for 30 calendar days before they become eligible for a leave related to a public health emergency, instead of the usual FMLA requirements (that require an employee to have worked for the employer for at least 1 year, worked for 1250 hours in the year before FMLA leave is taken, and worked at a location where at least 50 employees are employed at the location or within 75 miles of the

location).

- The first 10 days of the leave are unpaid, though an employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave.
- After the initial 10 days of leave, the employer must pay the employee for up to 10 weeks of leave at a rate no less than two-thirds of the employee's regular rate of pay. The amount of paid leave can be capped at \$200 per day and \$10,000 in the aggregate.
- Employees of employers with 25 or more employees are subject to the same job protections regularly provided in the FMLA, thus, generally speaking, an employer will need to return the employee to the same job or a substantially similar job upon return from leave. However, employers with fewer than 25 employees are excluded from this requirement if the employee's job no longer exists due to an economic down turn caused by a public health emergency. However, the employer would be required to try to return the employee to work if circumstances improved during a defined one-year period.
- The Secretary of Labor is authorized to issue regulations to:
  - Exclude certain health-care providers and emergency responders from receiving these new FMLA benefits.
  - Exempt small businesses with fewer than 50 employees from these new FMLA requirements when the imposition of such requirements would jeopardize the viability of the business as a going concern.
- In addition, employers of employees who are health care providers (as that term is defined in the FMLA) or emergency responders may elect to exclude these employees from receiving these new FMLA benefits.

Click on the following links for additional information:

[Employer Obligations](#)

[Additional Details on this Federal Law](#)

[Paid Leave Guide](#)

[Additional Federal Resources from the U.S. Department of Labor](#)

### **New Jersey Laws**

New Jersey has several laws that guarantee employees:

- Medical or family leaves for up to 12 weeks (which, in some cases, can be in addition to the 12 weeks provided for under the federal FMLA),

- Paid/earned sick time, and/or
- Wage-replacement benefits for needs relating to their own health conditions; the health conditions of their family members (very broadly defined); quarantine orders; closures of workplaces, schools, and childcare centers due to public health emergency; and unemployment.

The NJ Department of Labor and Workforce Development has a web page dedicated to the coronavirus (<https://www.nj.gov/labor/worker-protections/earnedsick/covid.shtml>) that has FAQs and an extremely useful chart (in English and Spanish) that explain the different types of paid/earned sick time and other wage-replacement benefits that are available in at least 11 different scenarios. See also our article on NJ's Paid Sick Leave Act, at <https://www.probonopartner.org/publications/new-jersey-paid-sick-leave-act>.

The NJ Legislature is considering a number of amendments to the foregoing laws. To learn more, see the summaries at <https://www.jacksonlewis.com/publication/new-jersey-covid-19-bills-would-expand-employee-benefits-establish-benefits-independent-contractors> and <https://www.bracheichler.com/insights/labor-and-employment-alert-coronavirus-covid-19-getting-employers-through-these-uncertain-times>.

The New Jersey Division on Civil Rights has a set of web pages that explain employees' entitlements under the NJ Family Leave Act and the NJ Law Against Discrimination, at <https://www.nj.gov/oag/newsreleases20/pr20200319a.html> and <https://www.nj.gov/oag/dcr/library.html>.

You can find more about New Jersey's response to COVID-19 at <https://nj.gov>.

If you have further questions, please [contact your local Pro Bono Partnership office](#)