



## Families First Coronavirus Response Act: Key Takeaways for Employers

With the passage of the Families First Coronavirus Response Act, and key revisions passed in the Coronavirus Aid, Relief, and Economic Security Act, employers are now responsible for applying the provisions in the Act. This document provides an overview of the Act, and provides key takeaways for how employers will need to apply provisions for paid sick time, family and medical leave, unemployment compensation, medical benefits, and tax credit implications for employers.

**Note that this is a summary only. Please contact a Seyfarth attorney for any legal advice or guidance needed.**

### Benefits Provisions of the Act

- A key goal of the Families First Act is to mitigate the spread of COVID-19. As such, all health plans, including employer-sponsored plans, must provide 100% coverage for COVID-19 testing, and any evaluation-related office visit; telehealth visit; or urgent care/emergency room fees.
- The Act does NOT mandate coverage or prohibits cost-sharing for anything that may follow the diagnosis, including hospitalization, etc.
- The Act appears to require a mandated telehealth benefit related to COVID-19 services; it is optional but not required for employers to provide telehealth services for non-COVID-19-related concerns.
- CARES Act (Phase Three Coronavirus Relief Package) addresses, among other things, no-cost coverage for the COVID-19 vaccine (when available), permissible reimbursement for over-the-counter drugs from FSAs, HRAs or HSAs, relaxation of distribution limitation and penalties for retirement plans, and executive compensation caps for companies receiving federal government loan/loan guarantee.

### Emergency Paid Sick Time Mandate

- Applies only to private employers with fewer than 500 employees (other coverage standards exist for public employers), with “employee” generally defined as any individual employed by an employer. All employees are immediately eligible to use paid sick time.
- There is a posting obligation; however, DOL guidance was released that stated that an employer may satisfy this requirement by posting on an external or internal website, or by mailing/emailing the information to employees.

- DOL FAQs indicate that employee population threshold is to be determined at the time employee leave is to be taken, and should include employees on leave, temporary employees, day laborers and the like. International employees need not be counted. Joint Employer test and Integrated Employer test should be reviewed and considered.
- Under PSL, full-time employees are entitled to two weeks (80 hours) and part-time employees are entitled to prorated amount equal to the typical number of hours that they work in a typical two-week period. Potential regulatory exemptions and relief are expected for certain small employers that have fewer than 50 employees and can show that the paid sick time requirements can jeopardize the viability of the business.
- Includes six qualifying conditions related to reasons why the employee cannot work or telework, up to and including caring for sick individuals and children who cannot go to school or daycare; certain qualifying conditions require full pay; others require 2/3 pay.

### Emergency Family and Medical Leave Expansion

- Once again, does not apply to employers with 500 or more employees, and potential regulatory exemptions for very small employers are expected. Employees who have worked for a covered employer for at least 30 calendar days are eligible. Again, Joint Employer and Integrated Employer tests should be reviewed and considered.
- Employers must provide paid leave after 10 days of unpaid leave. The employee may substitute other leave benefits (including the new PSL) during the initial period; After the 10-day period, employee can receive up to 10 weeks of paid leave, at a rate not less than 2/3 of “regular rate” (FLSA) multiplied by the number of hours normally scheduled.

- This mandate expands the FMLA by adding a new qualifying absence to the FMLA for “public health emergency leave” that is paid (as opposed to unpaid). However, this new paid leave is limited in scope of what absences are actually covered.
  - Employee must provide advanced notice of foreseeable leave as soon as practicable.
  - The amount of qualified sick leave wages paid to an employee that can be taken into account for tax credit purposes is capped at between \$200-\$511 per day, depending on circumstances.
  - The amount of qualified family leave wages that can be taken into account in determining the credit for any employee is capped at \$200 for any day for which the employee is paid qualified family leave wages, and \$10,000 in the aggregate for all calendar quarters.
  - Employers may not realize a double tax benefit; employers are required to include in their income the total amount of tax credit claimed. This offsets the tax deduction for wages claimed.
  - The Act provides for credits against self-employment tax in the case of self-employed individuals impacted by the coronavirus and related emergency measures.
- Tax Credits for Employers on Paid Sick Time and Paid Family Medical Leave**
- Tax credits are meant to offset employers costs of providing PST and PFML.
  - The Act provides employers with a refundable tax credit against the employer’s share of social security contributions and excise tax on employers subject to the Railroad Retirement Tax Act (“payroll taxes”) equal to 100% of PFML wages and PSL wages that an employer is required to pay under the Families First Act; plus the employer’s cost to maintain health coverage for eligible employees while they are on leave; plus the employer’s share of Medicare tax.
  - Tax credit will be immediate, as the employer will retain, rather than deposit, payroll taxes.
- Unemployment Compensation**
- Benefits are extended, with an easier application process. Further, the requirement for employee to search for employment has been suspended.

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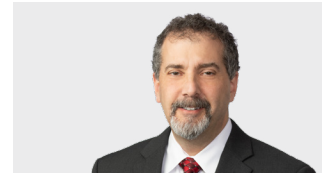
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