



March 19, 2020

## Families First Coronavirus Response Act, H.R. 6021

Updated March 23, 2020

In these unprecedented times, employers are faced with important decisions, legislative changes that require quick responses, and local authority action plans, all while balancing the emotional and physical health of their employees. It is our intention that this serves as a helpful resource to navigate this recent development.

The Nichols Accounting Group is providing this information for the benefit of our clients, and it is not intended as legal advice. If you have employment law questions, please seek the counsel of an employment attorney.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT & EMERGENCY PAID SICK LEAVE ACT RESOURCE GUIDE		
In general, the Emergency Family and Medical Leave Expansion Act amends the federal Family and Medical Leave Act (FMLA) to allow employees to take leave for certain childcare purposes related to COVID-19. It requires employers to partially compensate that leave after the first 10 days.		
	Emergency Family and Medical Leave Expansion Act	Emergency Paid Sick Leave Act
Which employers must comply?	Private sector employers with fewer than 500 employees and all government employers.	
Are any employers exempted?	Employers of healthcare workers and emergency responders may opt-out, and the DOL may exempt employers with fewer than 50 employees. Businesses with fewer than 50 employees can only qualify for a narrow exemption if the Department of Labor determines that providing these benefits would jeopardize the viability of the business. At this time, the Secretary of Labor has not exercised the authority to exempt a small business with less than 50 employees. We anticipate that the Department of Labor will provide additional regulation clarity within the next two weeks.	
What is the effective period?	Beginning April 2, 2020 and ending Dec. 31, 2020.	
Which employees are eligible	All employees who have worked for their current employer for 30 calendar days, however, employers are permitted to deny leave to employees who are health care providers and emergency responders.	No tenure required.
Duration of Leave	Twelve Weeks  First Ten Days are Unpaid. The employee may use paid vacation, sick leave, etc. during those 10 days but the employer may not require it.	Two Weeks
Hours	Full-time: 80 hours Part-time: Generally the average of hours worked per week over the last six months.	

	Emergency Family and Medical Leave Expansion Act	Emergency Paid Sick Leave Act
For what purposes can leave be taken?	<p>Leave applies when an employee is unable to work (or telework) in the following instances:</p> <ol style="list-style-type: none"> <li>The employee is caring for a child whose school or care provider is closed or unavailable due to COVID-19 precautions. A care provider is someone who receives compensation for care services on a regular basis.</li> </ol>	<p>Leave applies when an employee is unable to work (or telework) in the following instances:</p> <ol style="list-style-type: none"> <li>The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19</li> <li>The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19</li> <li>The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.</li> <li>The employee is caring for an individual who is subject to a quarantine or isolation order or advised to self-quarantine by a health care provider.</li> <li>The employee is caring for a child whose school or care provider is closed or unavailable due to COVID-19 precautions. A care provider is someone who receives compensation for care services on a regular basis.</li> <li>The employee is experiencing any other substantially similar condition, as specified by the U.S. Department of Health and Human Services.</li> </ol>
What is the rate of pay during leave?	<p>Two thirds of their regular rate.</p> <p>Not to exceed \$200 per day.</p> <p>Employer funds up to 10 weeks at maximum of \$10,000.</p> <p><i>Example:</i>            5 days at \$200 per day = \$1,000 per week            10 weeks at \$1,000 per week = \$10,000</p>	<p><b>For leave purposes one, two or three above:</b>            The higher of</p> <ul style="list-style-type: none"> <li>The employees' regular rate of pay</li> <li>Federal minimum wage</li> <li>Local minimum wage</li> </ul> <p>Not to exceed \$511 per day or \$5,110 in aggregate</p> <p><b>For leave purposes four, five, or six:</b>            Two thirds of their regular rate.</p> <p>Not to exceed \$200 per day or \$2,000 in aggregate</p>
Do I continue to pay health insurance while they are on leave?	<p>Yes.</p> <p>It adds to the tax credit expense eligibility calculation.</p>	
How does the new leave law impact existing leave policies and requirements?	<p>Coronavirus-related sick leave must be made available in addition to any other accrued sick leave provided by the employer (whether voluntarily, or as required by state or local law). The employee can elect, but is not required, to have this new coronavirus-related sick leave apply before any other sick leave.</p> <p>Existing policies cannot be amended to avoid paying coronavirus-related sick pay in addition to that provided under a current policy.</p> <p>FMLA benefits already utilized in 2020 may be calculated into the current benefit pay available.</p>	
Employer Notices	<p>Employers will be required to post a notice describing the new leave provisions. A model notice provided by the Secretary of Labor should be available within the next week.</p>	

**PAYROLL TAXES RELATED TO FAMILIES FIRST CORONAVIRUS RESPONSE ACT**

<p>Will employers have to pay FICA taxes on the benefits paid to employees under the Families First Coronavirus Response Act?</p>	<p>Neither expanded FMLA nor Emergency Paid Sick Leave are considered wages for purposes of social security taxes.</p> <p>Employers will not pay FICA taxes on leave paid pursuant to the Families First Coronavirus Response Act. Employers will not report Social Security (OASDI) tax on the benefits. Employers will report Medicare tax.</p>
<p>Will employees pay income tax and FICA on the paid leave they receive pursuant to the Families First Coronavirus Response Act?</p>	<p>Employees will pay Social Security tax, Medicare tax and Income tax withholding on any paid leave they receive.</p>

**EMPLOYERS' REFUNDABLE TAX CREDITS**

<p>Will employers be reimbursed for the leave they pay eligible employees under the Families First Coronavirus Response Act?</p>	<p>Yes. Employers will be reimbursed for every dollar of leave they pay to eligible employees under the Families First Coronavirus Response Act. The paid leave will be offset by a refundable federal employment tax credit. Since the credit is refundable, employers will receive full reimbursement for the paid leave regardless of their actual employment tax liability.</p> <p>The 1.45% Medicare tax is not included in the tax credit calculation.</p>
<p>Are self-employed individuals eligible for the tax credits?</p>	<p>Self-employed individuals are eligible for the tax credits if they would be eligible to receive paid leave as an employee.</p>
<p>Are the tax credits for self-employed individuals limited to self-employment taxes?</p>	<p>The tax credits for self-employed individuals is available to offset all income taxes including self-employment taxes.</p>
<p>Can an employer receive a credit for a qualified health plan expenses allocable to the paid leave?</p>	<p>In addition to the gross pay, you may add the portion of the health insurance premium paid for the employee while they were on eligible paid sick leave.</p> <p><i>Example:</i></p> <ul style="list-style-type: none"> <li>• Wages - \$1,000</li> <li>• Health Insurance Premium - \$300</li> <li>• Tax Credit "Bank" - \$1,300</li> </ul>
<p>Can employers deduct the benefits they pay employees under the Families First Coronavirus Response Act from gross income for income tax purposes?</p>	<p>No.</p> <p>Employers may not take a deduction for the sick pay and premium <i>and</i> receive a credit. The employer must choose one method.</p>
<p>Where can employers find state-specific action related to the Coronavirus?</p>	<p>We recommend that you reference the <a href="#">National Conference of State Legislature (NCSL)</a>.</p>

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