



# Legislative Update

**By Steve Nepstad, Human Resources Consultant**

**March 20, 2020**

## **FAMILIES FIRST CORONAVIRUS RESPONSE ACT – NEW EMPLOYER OBLIGATIONS**

---

Late on March 18, 2020 the President signed the Families First Coronavirus Response Act (FFCRA) which was passed by the Senate earlier that day. The bill is to go into effect on April 2, 2020 and contains employer obligations for providing additional paid leave for employee absences related to COVID-19. These new obligations apply to employers with fewer than 500 employees. In the next few days the Department of Labor (DOL) is expected to issue additional guidance for employers, as well as model language for mandatory coronavirus postings.

There are several details that still need to be clarified and that are anticipated to be covered in DOL's guidance. The following is a basic summary of the paid leave employer obligations contained in FFCRA:

### **A. Emergency Paid Sick Leave**

- Full-time employees of covered employers are entitled to up to 80 hours of emergency paid sick leave. Part-time employees are entitled to a prorated portion of 80 hours based on the average number of hours worked over a two-week period.
- This emergency paid sick leave must be provided **in addition to** any other paid time off the employer is already offering to employees.
- Employers may not require employees to exhaust existing leave balances before taking this emergency sick leave.
- Employers may not place the burden on employees who take emergency paid sick leave to find replacement employees to take their place during their absence.
- Employees who are unable to work or telework as a result of any of the following reasons must be provided FFCRA emergency paid sick leave:

#### **Reasons that entitle employees to be paid during leave **at or above their regular pay rate:****

- The employee is placed under a Federal, State, or local quarantine or isolation order related to COVID-19;
- The employee has been advised by a health care provider to self-quarantine due to COVID-19;
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

***The total amount of compensation any employer must provide to any single employee for leave taken for the above reasons is limited to \$511 per day, and \$5,110 in the aggregate.***

**Reasons that entitle employees to be paid during leave at or above 2/3 of regular pay rate:**

- The employee is caring for an individual who:
  - is under a Federal, State, or local quarantine or isolation related to COVID-19, or
  - has been advised by a health care provider to self-quarantine due to COVID-19;
- The employee is caring for a son or daughter whose school or place of care has been closed, or whose childcare provider is unavailable, due to COVID-19 precautions;
- 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. Except that an employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this subsection.

***The total amount of compensation any employer must provide to any single employee for leave taken for the above reasons is limited to \$200 per day, and \$2,000 in the aggregate.***

- A notice regarding emergency paid sick leave will be required to be posted by employers in conspicuous places. Model language for the postings is to be provided by DOL.

**B. Emergency Family and Medical Leave Expansion**

Up to 12 weeks of leave for a “qualifying need related to a public health emergency” have been made available to eligible employees under the FFCRA. Such a need arises only when an employee “is unable to work (or telework)” due to a need to care for his/her child(ren) (under age 18) if his/her child(ren)’s school or place of care has been closed, or his/her child(ren)’s child care provider is unavailable, due to an emergency with respect to COVID-19 declared by federal, state and/or local government.

- All employers with fewer than 500 employees must provide this emergency leave, including employers with fewer than 50 employees who do not currently offer FMLA leave to employees
- The DOL is given authority under FFCRA to provide regulations which may exempt certain small employers, who have fewer than 50 employees, from this obligation “when the imposition of requirements would jeopardize the viability of the business as a going concern.” (These regulations have not yet been issued.)
- The DOL may also issue regulations, with good cause, that prohibit “certain health care providers and emergency responders” from taking public health emergency leave.
- Employees who have been employed with the company for 30 or more calendar days are eligible for the emergency FMLA leave.
- Emergency FMLA is to be paid as follows:
  - **Unpaid Leave for 10 Days.** Covered employers may choose not to pay an employee for the first ten (10) days of such leave. Employees may choose to substitute any accrued vacation or sick time they may have during the unpaid portion of their leave; however, covered employers may not require employees to use such paid time during the emergency leave. It is anticipated that regulations, when issued, will allow employees to substitute emergency

paid sick leave described in the previous section above, as applicable, for the unpaid first ten days of this leave.

- **Leave to be Paid Beyond 10 Days.** Covered employers will be required to provide the employee with paid leave for the duration of the qualifying leave once the initial 10-day period has passed. The required compensation level during this period is to be **at least two-thirds of an employee's regular rate of pay** for "the number of hours the employee would otherwise be normally scheduled to work." The total amount any covered employer can be obligated to pay any employee with respect to this leave is now capped at \$200 per day, and \$10,000 in total.
  
- Covered employers must restore employees who take public health emergency leave to their previous position or an equivalent position upon their return from leave. Provisions in the FFCRA relax this requirement in certain circumstances for employers who employ fewer than 25 employees. In particular, those smaller employers do not need to restore an employee to his or her job following public health emergency leave if : 1) the "position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer (i) that affect employment, and (ii) are caused by a public health emergency during the period of leave"; 2) the employer makes "reasonable efforts" to restore the employee to an equivalent position; *and* 3) if the employer's "reasonable efforts" fail, the employer makes "reasonable efforts" to contact the employee if an equivalent position becomes available during the following year.

Please note that all of these expanded FMLA requirements will expire at the end of 2020.

***For assistance and consultation on these and other HR-related issues, feel free to contact us:***

***Richards HR Solutions*** (a division of Richards Benefits and Financial Services, LLC.)

[snepstad@RichardsBenefits.com](mailto:snepstad@RichardsBenefits.com)

920-319-4742

[www.RichardsInsurance.com](http://www.RichardsInsurance.com)