

The Families First Coronavirus Response Act: An Analysis

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Labor and Employment Alert

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On Tuesday, the United States Senate passed, and President Trump, signed into law the Families First Coronavirus Response Act (the Act). The Act contains emergency relief for both individuals and small businesses from the extreme economic impact of the COVID-19 outbreak.

The major provisions of the Act are summarized below:

PAID SICK LEAVE AND PAID FAMILY LEAVE FOR WORKERS

Small and mid-size employers with 500 or fewer employees must provide:

- Up to 80 hours – or two weeks – of paid sick leave at the employee's normal salary, up to \$511 per day (for reference, this would fully compensate employees earning up to approximately \$130,000 per year); and
- Up to 12 weeks of paid family and medical leave at 67 percent of the employee's normal salary, up to \$200 per day (for reference this would fully compensate employees earning up to approximately \$75,000 per year).

The maximum aggregate total that an employee can earn under the "Emergency Paid Sick Leave" portion of the Act is \$5,110 for absence due to self-care, and \$2,000 for absence due to care for others. The maximum aggregate amounts of paid family leave is \$10,000 under the Family Medical Leave Act (FMLA) expansion provided by the Act.

The paid sick time benefits are available to an employee who:

- Is subject to a federal, state or local quarantine or isolation order related to COVID-19;
- Has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19; or
- Is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

The Act covers two-thirds salary for two weeks for an employee who is caring for an individual who is subject to a government order to quarantine or isolate or has been advised by a healthcare provider to self-quarantine. The full 12 weeks of family leave is only available to individuals who must remain home to take care of a child who does not have schooling or childcare options due to the coronavirus pandemic. An employee also must have worked for his or her employer at least 30 days to qualify for the family leave benefits.

Additionally, paid family leave will not be available until an employee has already been out of work for a 10-day period. An employee can use PTO during this 10-day wait period.

Consistent with the FMLA, the Act also requires employers to restore employees to equivalent positions upon their return to work. However, the Act exempts employers with less than 25 employees from restoration if the original position no longer exists due to economic conditions that are caused by this public health emergency and the employer made reasonable efforts to restore the employee to an equivalent position.

To pay for these programs, businesses will be entitled to a federal tax credit. The credit applies against the 6.2 percent tax employers pay for an employee's Social Security. If the cost to comply with the paid sick leave and family leave programs exceeds the amount of the tax credit, the business would receive a refund from the Internal Revenue Service (IRS). The U.S. Treasury Department is expected to provide additional guidance on how the programs work, including the timing of the refunds.

Government employers must provide the paid sick leave and family leave benefits, but large companies of over 500 employees are not beholden to the Act's paid sick leave and family leave requirements. Employees of these large employers will rely on the company's own policies.

The Secretary of Labor can exempt businesses with fewer than 50 employees and healthcare providers, such as hospitals and nursing homes, from the paid sick leave and family leave requirements. It is not clear yet whether and to what extent these exemptions would be granted. The Act provides that the Secretary of Labor will also issue guidelines to assist employers in calculating the amount of paid sick time.

Self-employed individuals, including those working in the so-called "gig economy," are also eligible for paid sick leave and family leave under the Act. These individuals can receive a refundable tax credit covering up to two weeks of sick pay at the employee's average pay and 12 weeks of family leave pay at 67% of the employee's average pay. The same caps of \$511 per day for sick leave and \$200 per day for family leave apply to the self-employed.

Part-time workers of covered companies will also benefit. They will get paid sick leave equivalent to the number of hours they typically work over a two-week period.

The paid sick leave and family leave benefits go into effect no later than April 2, 2020 and will remain available until December 31, 2020.

FREE CORONAVIRUS (COVID-19) TESTING

The costs of tests will be free to patients, whether covered by private insurance or a government program. Under the Act, providers will be reimbursed for testing costs by the federal government. The Act's provisions on testing coverage help to further clarify questions surrounding how insurance should cover coronavirus testing treatment, a topic we addressed in a client alert.

MEDICAID MATCHING FUND INCREASE

The government will provide a 6.2-percentage point increase in federal payment to Medicaid for states to help support testing and treatment services for COVID-19.

FOOD ASSISTANCE PROGRAMS FUNDING

The Act includes \$1 billion in funding for food security programs. Included in this package is funding for:

- The Supplemental Nutrition Assistance Program (SNAP). In addition to funding for the program, work and work training requirements for SNAP are suspended during the coronavirus pandemic under the Act;
- Food assistance for the households of children who receive free or reduced-cost lunches at school;
- Nutritious food for low-income pregnant women, or mothers of young children, who become unemployed because of the coronavirus spread;

- Local food banks for their purchase, storage and distribution of food; and
- Delivery of home-delivered and prepackaged meals to low-income seniors who rely on federal programs.

UNEMPLOYMENT INSURANCE BENEFITS

The Act also includes \$1 billion in emergency grants to states for the processing and paying of unemployment insurance.

This Act is part of a series of bills that Congress is working to pass in response to the pandemic. Congress is currently drafting an additional piece of legislation to stimulate the economy in the wake of the COVID-19 outbreak by providing additional economic assistance to both individuals and businesses. We will continue to provide updates on the application and interpretation of the Act, as well as additional legislation related to COVID-19 as more information becomes available.

The White and Williams Labor and Employment Group has compiled the most frequently asked questions regarding the Families First Coronavirus Response Act here.

If you have any questions please reach out to James Anelli (anellij@whiteandwilliams.com; 201.368.7224), Rob Pettigrew (pettigrewr@whiteandwilliams.com; 201.368.7210) or another member of the Labor and Employment or Corporate and Securities Groups.

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates here.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.