



Labor & Employment Alert

The Families First Coronavirus Response Act Update

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On March 15, we provided [this client alert](#) detailing the U.S. House's [Families First Coronavirus Response Act](#). Yesterday, the House made “technical corrections” which were quite substantive. This Client Alert summarizes *what's changed* since the weekend as the measure moves to the Senate, which is expected to amend and consider the bill later this week.

[GableGotwals' Employment and Labor team](#) is closely monitoring the developments. As soon as President Trump signs a final version, we will notify employers. We will also have policy templates available for employers to use for compliance with the final version of the Act. Employers should stay alert as we monitor updates and changes closely.

Emergency Family and Medical Leave Expansion Act

In a dramatic shift, the FMLA Expansion now only extends the FMLA to *employees who are unable to work (or telework) to care for a child under 18 years of age when the child's school or place of care has been closed* due to coronavirus. The FMLA Expansion applies to all employers with fewer than 500 employees, and to all employees who have been employed for 30 days.

The Secretary of Labor may issue regulations to exclude employees who are health care providers or emergency responders, and to exempt small businesses with less than 50 employees when the leave would “jeopardize the viability of the business as a going concern.” In addition, the legislation provides that employers with less than 50 employees will not be subject to a civil action by employees.

The first **10 days** (reduced from 14) may still be *unpaid* unless the employee chooses to use paid time off benefits. After 10 days, employers must pay for the FMLA leave at no less than two-thirds of the employee's usual rate of pay.

Importantly, the House bill now has *pay caps* and employers will not pay more than \$200 per day and \$10,000 in the aggregate.

Like the FMLA, the FMLA Expansion *prohibits retaliation* against an employee who either requests to use or uses FMLA-COVID-19 leave. Under the FMLA, not only may an employer be held liable for violations, but also *individual managers and supervisors face risk of personal liability*.

The job restoration provisions are unchanged from the earlier version of the Act.

Emergency Paid Sick Leave Act

The Sick Leave Act still requires employers to provide employees (no matter how long they have been employed) up to two weeks of paid emergency sick leave if they are unable to work (or telework) due to the following reasons:

- ***Self-isolate or self-quarantine*** because of a Federal, State, or local quarantine order;
- ***Self-quarantine*** because of a healthcare provider recommendation;
- ***Obtain a diagnosis*** when experiencing symptoms;
- ***Care for a family member*** who is self-isolating or under self-quarantine; or
- ***Care for a child*** if the school or place of care has closed due to coronavirus; or
- ***Any other substantially similar condition*** specified by the Secretary of Labor.

Emergency sick leave is in ***addition*** to any other sick leave already provided by the employer if the employer's leave was in place before the date of enactment of the Act.

Emergency sick leave is capped at 80 hours for a full-time employee. Part-time employees may take the typical number of hours they work in an average two-week period. Unused emergency sick leave does not carry over from one year to the next.

The measure now includes ***pay caps***, limiting the leave to \$511 per day (\$5,110 aggregate) for self-care and quarantine relating to coronavirus, and \$200 per day (\$2,000 in the aggregate) paid at two-thirds the employee's usual rate of pay when leave is taken for caregiving.

Employers may exclude healthcare providers and emergency responders. And, the Secretary of Labor may issue regulations to exempt businesses with fewer than 50 employees if the leave would "jeopardize the viability of a business as an ongoing concern."

Please consider forwarding this Client Alert to anyone you know who handles HR for smaller employers that may be impacted by this Act. To be added to our mailing list, please contact [Melissa Pasha](#).



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