



Dear Friends,

The Families First Coronavirus Act (FFCA) has been signed into law. With it comes two very significant implications for employers and employees impacted by COVID-19. This includes a requirement for paid sick leave under the Emergency Paid Sick Leave Act and this includes a requirement for paid leave under the Emergency Family and Medical Leave Expansion Act. The following provides a summary of what you need to know. Please do not hesitate to reach out to us by telephone (954-527-1115) or e-mail (blerner@kvllaw.com). We are here to help, and wish for everyone to stay safe and be well.

Sincerely,

Brian Lerner
Chair, Labor & Employment

What companies are covered by the Emergency Paid Sick Leave Act and are there any exemptions?

The law, which goes into effect no later than fifteen days from today, applies to companies that have less than 500 employees. There are exemptions for employers of health care providers and emergency responders. There also is a possible exemption for companies that have less than fifty employees, who are able to establish that the requirements of the law would jeopardize the business as an ongoing concern. Whether an exemption for companies with fewer than fifty employees will be permitted (granted by the U.S. Department of Labor's Secretary of Labor) and how to obtain such an exemption are unknown at this point. But the law does require guidance to be issued by the Secretary of Labor within fifteen days. Employers and employees therefore should continually review the U.S. Department of Labor website (www.dol.gov) for updated information.

Which employees are entitled to paid sick leave under the Emergency Paid Sick Leave Act?

The law requires a company to give paid sick leave to an employee (regardless of how long s/he has worked for the company) for the following: (1) the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19; (2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (3) the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis; (4) the employee is caring for an individual who is subject to (1) or (2) above; (5) the employee is caring for his/her son or daughter if the school or place of care for the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or (6) 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.

How much paid sick leave must employees receive?

Full-time employees are entitled to eighty hours of paid sick leave. Part-time employees are entitled to a number of hours of paid sick leave equal to the number of hours that s/he works, on average, over a two-week period. Companies should note that they cannot require that the employee use any other available paid leave before using paid sick leave under the Emergency Paid Sick Leave Act. Companies also should note that once an employee takes paid sick leave and returns to work, the company is not required to provide any further paid sick leave.

Exactly how much money must a company pay an employee under the Emergency Paid Sick Leave Act?

If time off is taken so the employee may care for him/herself, the employee must be paid at the higher of (1) the employee's regular rate of pay, (2) federal minimum wage, or (3) the state or local minimum wage. If time off is taken to care for a sick family member or a child who is not in school, the employee must be paid at two-thirds of his/her regular rate of pay. There is a cap on the amount to be paid to employees. There is a cap of \$511 per day and an aggregate limit of \$5,110 for those employees taking leave to care for themselves (those receiving full wages). There is a cap of \$200 per day and an aggregate limit of \$2,000 for those employees taking leave to care for a sick family member or a child who is not in school.

Is there any tax relief for companies providing paid sick leave under the Emergency Paid Sick Leave Act?

The law does provide for a refundable employment tax credit equal to some amounts that an employer pays to an employee. These amounts increase by the amount of nontaxable health insurance premiums paid by the employer for employees who are out on paid sick leave for the days of leave, and further increase by the amount of Medicare tax owed by the employer with respect to the paid sick leave payments. The total credit amount also is included in the employer's income for income tax purposes. Companies should consult with tax professionals for further advice as to how to obtain relief.

What companies are covered by the Emergency Family and Medical Leave Expansion Act and are there any exemptions?

The law, which goes into effect no later than fifteen days from today and ends on December 31, 2020, applies to companies that have less than 500 employees. There are exemptions for employers of health care providers and emergency responders. There also is a possible exemption for companies that have less than fifty employees, who are able to establish that the requirements of the law would jeopardize the business as an ongoing concern. Whether an exemption for companies with fewer than fifty employees will be permitted (granted by the U.S. Department of Labor's Secretary of Labor) and how to obtain such an exemption are unknown at this point. Employers and employees should continually review the U.S. Department of Labor website (www.dol.gov) for updated information and potential guidance.

Which employees are entitled to emergency FMLA leave?

The law requires companies to give emergency FMLA leave to all employees who have been with the company at least thirty days (as compared to one year and have worked 1,250 hours as generally required for leave under the Family and Medical Leave Act). An employee is entitled to emergency FMLA leave if s/he is unable to work (or telework) due to a need for leave to care for the employee's son or daughter who is under eighteen because the child's school or place of care has been closed or his or her childcare provider is unavailable due to a public health emergency. The law defines public health emergency to be an emergency with respect to COVID-19 as declared by federal, state, or local authorities.

How much emergency FMLA leave must employees receive and is any of that leave paid?

The law requires both paid and unpaid leave. The first ten days of emergency FMLA are unpaid. The employee however may choose (and the employer may require the employee) to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave. Note that for most employees, this ten day period will be paid given that the employee would be receiving compensation under the Emergency Paid Sick Time Act. After ten days, the employer must provide partial paid leave for each additional day of leave. The amount paid must not be less than two-thirds of an employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work. In the case of an employee whose schedule varies from week-to-week and thus cannot determine with certainty the number of hours that would have been worked, the amount is based on a calculation looking at a six-month average. In either case, there is a cap of \$200 per day and an aggregate limit of \$10,000.

What are companies obligated to do for employees returning from emergency FMLA leave?

For companies with twenty-five or more employees, they must restore the employee to his/her position consistent with the Family and Medical Leave Act. For companies with less than twenty-five employees, job restoration is not required if all three of the following conditions are satisfied: (1) the employee takes emergency FMLA leave; (2) the position held by the employee does not exist due to economic conditions or other changes in operating conditions that affect employment and are caused by a public health emergency during the period of leave; and (3) the employer makes reasonable efforts to restore the employee to an equivalent position. If no equivalent positions are available at the time the employee tries to return from emergency FMLA leave, the employer must attempt to contact the employee if an equivalent position becomes available in the next year.

Is there any tax relief for companies providing paid leave under the Emergency Family and Medical Leave Expansion Act?

The law does provide for a refundable employment tax credit equal to some amounts that an employer pays to an employee. These amounts increase by the amount of nontaxable health insurance premiums paid by the employer for employees who are out on paid sick leave for the days of leave, and further increase by the amount of Medicare tax owed by the employer with respect to the paid sick leave payments. The total credit amount also is included in the employer's income for income tax purposes. Companies should consult with tax professionals for further advice as to how to obtain relief as some companies will not be allowed to use the tax credit as they already provide a form of paid FMLA leave and already may be receiving a tax credit.

The answers provided above attempt to address a few questions about these two new, significant employment laws. Please be sure to check state and local laws, which may provide additional protections or restrictions. To stay up-to-date on COVID-19, including best practices, please visit <https://www.cdc.gov/>.

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