

## **IMPORTANT COMPLIANCE INFORMATION FOR EMPLOYERS**

*Updated Sunday, March 29, 2020*

The Families First Coronavirus Response Act (FFCRA, "The Act") was signed into law by the President on March 18, 2020. One key item that has changed in the last few days is the effective date. **The Act is scheduled to go into effect on April 1, 2020, not April 2 as previously announced.**

CSC Paymaster is actively working with the appropriate agencies and advisors to keep current with the evolving legislation. We are updating our systems as the guidelines are released in order to be prepared to process payrolls under the new rules. For up-to-date information please visit our website, [www.cscpaymaster.com](http://www.cscpaymaster.com), and click on the COVID-19 link.

The following information is what we currently know and is subject to change. We can expect that in the coming days, federal regulatory agencies will provide guidance on how to implement and execute the new requirements.

### **Summary of The Act**

Employees will be eligible for 10 days of paid sick leave (full pay for self, 2/3 pay for family care) and use of 12 weeks of Emergency Family and Medical Leave Act (EFMLA) leave (two weeks unpaid and then up to 10 weeks at 2/3 pay) for several circumstances related to COVID-19.

### **Key Elements for Employers**

- Emergency FMLA expansion (EFMLA) under the Coronavirus Response Act's Public Health Emergency Leave provision to include employers with fewer than 500 employees
- Emergency paid sick leave
- Payroll tax credits for paid sick and paid FMLA leave
- Group health plan benefit mandate

### **Emergency FMLA Expansion (EFMLA) for Public Health Emergency Leave**

- **Covered employers:** Eligible employers are businesses and tax-exempt organizations with fewer than 500 employees.
- **Covered employees:** Any employee who has been employed for at least 30 calendar days, though employers can choose to exclude employees who are health care providers or emergency responders.
- **Covered leave purpose:** The EFMLA leave is available only when an employee is unable to work or telework due to the need to care for a child under 18 if the child's school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency, defined as an emergency with respect to the coronavirus declared by a federal, state, or local authority.
- **Duration:** Up to 12 weeks (10 weeks paid) of job-protected leave.

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- **Compensation:** The first 10 days of the leave are unpaid. Employers cannot require employees to use accrued time, but the employee can elect to use any other leave available to them, such as accrued Sick, Vacation, PTO, or sick leave as provided by The Act. After 10 days, employers must pay two thirds of the employee's regular\* rate of pay for the number of hours they would normally be scheduled to work, capped at \$200/day and \$10,000 in total. \*Regular rate as defined by FLSA
- **Reinstatement to position after leave:** The same reinstatement provisions apply as under the traditional FMLA. However, restoration to position does not apply to employers with fewer than 25 employees if certain conditions are met: The job no longer exists because of changes affecting employment caused by economic downturn or by a public health emergency; subject to the employer making reasonable efforts to return the employee to an equivalent position; and the employer makes efforts to contact a displaced employee if anything comes up within one year of when they would have returned to work.
- **Regulations and enforcement:** The Department of Labor's Wage and Hour Division (DOL-WHD) will be authorized to issue regulations to exclude certain health care providers and emergency responders from paid leave benefits; to exempt small businesses with fewer than 50 employees from the paid leave requirements if such requirements would "jeopardize the viability of the business"; and ensure consistency between the emergency sick leave and family leave provisions. The DOL-WHD will issue guidelines for employers within 15 days after the law's enactment. For questions about the Emergency FMLA, employers can contact the DOL-WHD at 1-866-4-USWAGE or [www.dol.gov/agencies/whd/contact](http://www.dol.gov/agencies/whd/contact).

## **Emergency Paid Sick Leave**

- **Covered employers:** Eligible employers are businesses and tax-exempt organizations with fewer than 500 employees.
- **Covered employees:** All employees, regardless of how long they have been employed, though employers can choose to exclude employees who are health care providers or emergency responders.
- **Covered employees are entitled to:**
  - Full time employees are entitled to 80 hours of paid sick leave.
  - Part time employees are entitled to sick leave equal to the number of hours worked, on average, over a typical two-week period.
- **Paid sick leave applies to employees who meet any of the following conditions:**
  1. When quarantined or isolated subject to federal, state, or local quarantine/isolation order;
  2. When advised by a health care provider to self-quarantine (due to concerns related to COVID-19);
  3. When experiencing symptoms of COVID-19 and seeking a medical diagnosis;
  4. When caring for an individual doing #1 or #2 (2/3 pay);
  5. When caring for a child whose school or place of care is closed due to COVID-19 (2/3 pay);
  6. When the employee is experiencing any other substantially similar condition as specified by The Department of Health and Human Services (HHS) (2/3 pay).
- **Rate of pay:**
  - Sick leave must be paid at the employee's regular\* rate of pay for leave used for the employee's own illness, quarantine, or care. \*Regular rate as defined by FLSA
  - Sick leave must be paid at two-thirds of the employee's regular rate of pay if leave is taken to care for a family member or to care for a child whose school has closed, or if the employee's childcare provider is unavailable due to the coronavirus.
  - Pay is capped at \$511/day, \$5,110 in total for reasons 1, 2, and 3 described above.
  - Pay is capped at \$200/day, \$2,000 in total for reasons 4, 5, and 6 described above.

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- **Interaction with other employer-provided paid sick leave and other paid leave:**
  - This act does not pre-empt existing state and local paid sick leave requirements.
  - Employers cannot require employees to use other leave first.
  - Sick leave provided for under the bill does not carry over from year to year, and the requirements expire December 31, 2020.
- **Notice requirements:**
  - Employers must provide a notice or availability to their employees and a model notice will be published within 7 days of enactment of The Act.
  - Employers can require employees to provide reasonable notice as to their health status as a condition of continuing to be able to use this paid sick leave.
- **Regulation and enforcement:** The Department of Labor's Wage and Hour Division (DOL-WHD) will be authorized to issue regulations to exclude certain health care providers and emergency responders from paid leave benefits; to exempt small businesses with fewer than 50 employees from the paid leave requirements if such requirements would "jeopardize the viability of the business"; and ensure consistency between the emergency sick leave and family leave provisions. The DOL-WHD will issue guidelines for employers within 15 days after the law's enactment. For questions about the Emergency FMLA, employers can contact the DOL-WHD at 1-866-4-USWAGE or [www.dol.gov/agencies/whd/contact](http://www.dol.gov/agencies/whd/contact).

## **Payroll Tax Credits (Paid Sick Leave Credit and Child Care Credit)**

- Employers that are required to provide emergency paid FMLA leave or paid sick leave will be provided with tax credits.
- These tax credits will give employers 100%, dollar-for-dollar reimbursements for the cost of providing paid leave to their employees pursuant to The Act.
- The cost of paid sick leave and EFMLA wages are reimbursable, as well as the cost of the employer share of the health insurance for employees on paid leave.
- Employers should account for the sick leave and EFMLA leave in separate earnings code(s) for ease of tracking.
- The Department of the Treasury will be authorized to issue regulations or guidance relating to the credits.
- Additional details are expected by the end of this week.

## **Prompt Payment for the Cost of Providing Leave**

When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes with the IRS.

- The Act states that for eligible employers who pay qualifying sick or child care leave, they will be able to retain, rather than deposit, an amount of the payroll taxes equal to:
  - The amount of qualifying sick leave paid to employees; and
  - The amount of the child care leave (EFMLA) that they paid to employees; plus
  - The amount of the employer share of the health insurance premium paid on behalf of the employees receiving paid leave
- The payroll taxes that are available for retention include the federal withholding tax and both the employee and employer share of Social Security and Medicare taxes.
- If there are not sufficient payroll taxes to cover the cost of the qualified sick, child care leave paid, employers will be able to file a request for an accelerated payment back from the IRS. At this time, the IRS expects to process these requests in two weeks or less.

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- Employers that are not subject to the legislation (i.e. employers with more than 500 employees) are not entitled to receive these payroll tax credits.

## **Limits to the Credits Employers Will Receive**

- Limits will mirror the caps on what is paid to employees.
  - Tax credit for sick leave wages paid is capped at \$511/day, \$5,110 total per employee for reasons 1, 2, and 3 described above and is limited to 10 days per employee.
  - Tax credit for sick leave wages paid is capped at \$200/day, \$2,000 total per employee for reasons 4, 5, and 6 described above and is limited to 10 days per employee.
  - Tax credit for EFMLA child care leave wages paid (including qualified health plan expenses relating to those wages) is capped at \$200/day per employee, \$10,000 in the aggregate for all calendar quarters.

## **Example**

- If an eligible employer paid \$5,000 in sick leave and was supposed to deposit \$8,000 of payroll taxes in total for all employees, the employer could use up to \$5,000 of the \$8,000 for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.

## **Health Plan Benefit Mandate**

- The Act requires all insured and self-funded medical plans, including grandfathered plans, to cover diagnostic testing-related services for COVID-19 at 100 percent without any deductibles or co-pays.
- Examples include services provided by doctors, emergency rooms, and urgent care centers leading up to the decision that testing is needed, along with the actual lab-based testing.
- The mandate does not apply to treatment.

CSC Paymaster is committed to providing our clients with updates of the rapidly evolving legislation as it becomes available. We want you to know that we are here to assist you in any way we are able, however, please be aware that this is informational only and cannot be construed as tax or legal advice. We encourage all our clients to consult with appropriate legal and tax advisors. Thank you.

The CSC Paymaster Management Team

For more information, resources, and links to the latest news and press releases, visit:

IRS: [www.irs.gov/coronavirus](http://www.irs.gov/coronavirus)

Click on [IR-2020-57](https://www.irs.gov/irb/2020-57) for up to date information regarding payroll tax credits

Department of the Treasury: <https://home.treasury.gov/coronavirus>

Department of Labor: [www.dol.gov/agencies/whd/pandemic](http://www.dol.gov/agencies/whd/pandemic)

CDC: [www.coronavirus.gov](http://www.coronavirus.gov)

***This article is general in nature and does not constitute legal advice and could be subject to change based on regulations that may be issued, clarifying the benefits and requirements of this new law.***