

Coronavirus and the Workplace Updated: Trump Signs Families First Coronavirus Response Act

March 19, 2020

President Donald Trump has signed the Families First Coronavirus Response Act (“FFCRA”), or H.R. 6201, which had passed the Senate on March 18, 2020 by a vote of 90 to 8. The bipartisan legislation, which was previously approved by the House of Representatives on Monday, includes two provisions - an emergency expansion of the Family Medical Leave Act (“FMLA”) and a new federal paid sick leave law - providing paid leave to employees unable to work due to the 2019 novel coronavirus (COVID-19) pandemic. The bill also provides tax credits for employers when employees receive paid leave due to COVID-19. These emergency measures are expected to become effective no later than fifteen days from the date of the FFCRA’s enactment.

Emergency Family and Medical Leave Expansion Act (“EFMLA”).

- **Available Benefits for Eligible Employees.** Under the EFMLA, eligible employees who have been employed for at least 30 calendar days by an employer may receive up to 12 weeks of family leave if they are caring for children whose schools have closed due to a public health emergency related to COVID-19. The first 10 days for which an employee takes leave under the EFMLA may consist of unpaid leave. An employee may elect to substitute any accrued and unused vacation leave, personal leave, or medical or sick leave for unpaid leave during the initial 10-day period.
- **Eligible Employers.** Coverage would change from only covering employers with 50 or more employees under the FMLA to instead covering those employers with fewer than 500 employees. Employers with 500 or more employees are not mentioned in the EFMLA.
- **Calculating Paid Leave for Full-Time Employees.** Under the EFMLA, paid leave is calculated in an amount that is not less than two-thirds of an employee’s “regular rate of pay” for the number of hours the employee would otherwise be normally scheduled.
- **Calculating Paid Leave for Part-Time Employees.** Employees who work a part-time or fluctuating schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking EFMLA. Employees who have worked

for less than six months prior to leave are entitled to the employee's reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.

- **Limits on Paid Leave.** The amount of available paid leave under the EFMLA is limited to \$200 per day and \$10,000 in the aggregate.
- **Job Protection.** Employers with 25 or more employees will have the same obligation as under traditional FMLA to return any employee who has taken EFMLA to the same or equivalent position upon the return to work. Employers with fewer than 25 employees may be excluded from this requirement if the employee's position no longer exists due to an economic downturn or other circumstances caused by a public health emergency during the leave period. Employers must still make reasonable attempts to return the employee to an equivalent position for up to a year following the employee's leave.

Emergency Paid Sick Leave Act ("EPSLA").

The EPSLA provides employees with paid sick leave to the extent that the employee is unable to work (or telework) due to a need for leave for one of the following qualifying reasons:

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 is seeking a medical diagnosis;
 4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in subparagraph (2);
 5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare 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.
- **Eligible Employers.** The EPLSA requirements apply to employers with fewer than 500 employees.
 - **Available Benefits for Full-Time Employees.** Eligible full-time employees are entitled to receive up to 80 hours of paid sick leave at the employee's regular rate (or two-thirds the employee's regular rate to care for qualifying reasons 4, 5, or 6 listed above).
 - **Available Benefits for Part-Time Employees.** Eligible part-time employees are entitled to receive a number of hours equal to the number of hours that such employee works, on average, over a 2-week period.

- Caps on Paid Leave. Paid sick leave wages are limited to \$511 per day up to \$5,110 total per employee for their own use and to \$200 per day up to \$2,000 total to care for others.
- Prohibitions. An employer may not require, as a condition of providing paid sick time, that the employee involved search for or find a replacement employee to cover the hours during which the employee is using paid sick time. Additionally, an employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time the EPSLA.
- Use of Paid Sick Time. Paid sick time must be available for immediate use for eligible employees regardless of how long the employee has been employed by an employer.
- Effective Date, Carryover and Expiration. The EPSLA will take effect no later than 15 days after the date of the bill's enactment and paid sick leave would not carry over from year-to-year. EPSLA entitlements would expire on Dec. 31, 2020.

Tax Credits for Paid Family and Medical Leave and Paid Sick Leave.

Employers who are required to provide paid leave under the EFMLA or EPSLA may be entitled to refundable tax credits equal to 100% of the benefits paid by the employer. These tax credits are allowed against the employer portion of Social Security taxes.

What Happens Next?

Now that President Trump has signed this important legislation, employers with fewer than 500 employees must comply with these leave requirements within 15 days.

Additionally, Governor Cuomo is proposing similar emergency legislation in New York State that may be in addition to these new federal requirements. It is important during these challenging times to understand these new requirements that may apply to your business and your employees. If you have any questions regarding these important considerations or other employment matters, please contact Felicia Ennis, any of the undersigned, or your regular Warsaw Burstein attorney.

Felicia S. Ennis	fennis@wbny.com	(212) 984-7753
Martin R. Lee	mlee@wbny.com	(212) 984-7868
Avi Lew	alew@wbny.com	(212) 984-7725

This material has been prepared for informational purposes only, and is not intended to provide, and should not be relied on for, legal or tax advice. If you have any specific legal or tax questions regarding this content or related issues, then you should consult with your professional legal or tax advisor.

Warsaw Burstein, LLP (www.wbny.com) and its attorneys are experienced business lawyers, regularly advising business owners, investors and entrepreneurs about business law, corporate and personal matters. The firm has the following practice areas:

corporate/securities, private investment funds, banking and finance, exempt organizations, financial services, intellectual property, litigation, matrimonial and family law, real estate and construction, tax and trusts and estates. We have comprehensive experience representing a wide range of international, national and local businesses of all sizes, as well as many prominent families and individuals, in an extensive array of business and transactional matters.