

## **Families First Coronavirus Response Act (FFCRA) Signed into Law, Will Require Employers with Fewer Than 500 Employees to Provide Paid Leave**

March 18, 2020, 8:30 p.m.

This evening, President Trump signed the *Families First Coronavirus Response Act (FFCRA)*, which goes into effect within the next 15 days. Here are the key aspects of the bill for employers to be aware of:

**Paid Sick Leave:** Employers with fewer than 500 employees are required to provide full-time employees up to 80 hours of paid sick leave (up to \$511/day, \$5,110 in the aggregate), or 2/3 pay if caring for a family member or child home from school (see (4) (5) and (6) below) for circumstances related to COVID-19 because:

- (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 because of 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 subject or advised to quarantine or isolation;
- (5) the employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions; or
- (6) the employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Part-time employees receive the number of hours they worked on average in the prior six-month period, per day, or the reasonable expectation of the employee at the time of hiring regarding the number of hours per day.

Employees are immediately eligible for this paid leave, regardless of tenure, and an employee's accrued leave cannot be used concurrently with this leave. Small businesses with fewer than 50 employees and health care providers or emergency responders may be entitled to a hardship exemption. This law applies to all "public agency" employers, regardless of number of employees.

This law expires at the end of the 2020, and there will be a 100% tax credit to employers on payroll taxes for the amount of sick leave paid.

**Expansion of FMLA:** This law expands FMLA coverage on a temporary basis to any workplace with fewer than 500 employees, and covers employees who have been working for at least 30 calendar days prior to the leave (rather than a year). It provides for up to 12 weeks of leave (partially paid, except for the first two weeks, which is covered by the paid sick leave provision above) for employees who are unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency.

- "Child care provider" means a provider who receives compensation for providing child care services on a regular basis, including "eligible child care provider" as defined by 42 U.S.C. § 9858n.
- "School" means an "elementary school" or "secondary school" as such terms are defined in 20 U.S.C. § 7801.

*This alert was prepared by Hand Arendall Harrison Sale's Employment and Labor Practice Group. For further information or assistance, please contact Christine Hart or the Employment and Labor Group attorney with whom you normally work.*

Christine Harding Hart

Author

[chart@handfirm.com](mailto:chart@handfirm.com)

251-694-6358

Mark T. Waggoner

Practice Group Chair

[mwaggoner@handfirm.com](mailto:mwaggoner@handfirm.com)

205-324-4400

Practice Group Members:

Roger L. Bates

Windy Cockrell Bitzer

Lisa Darnley Cooper

J. Cole Davis

Tracy R. Davis

Christine Harding Hart

C. Dennis Hughes

Robert C. Jackson

John S. Johnson

Tracy T. Miller

Edward T. Rowe

Drew Sinor

George M. Walker

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- "Public health emergency" is defined as an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

The first 14 days are "unpaid" (but see above) and employees can use other available paid leave. After the first 14 days, employees must be paid at 2/3 the regular rate of pay, up to \$200/day and \$10,000 in the aggregate.

- For part-time employees, employers must calculate the appropriate leave using an average hours/day over the previous six months, or if not possible, the average number of hours per day the employee is normally scheduled to work.
- Exceptions may be granted by the Department of Labor to small businesses (less than 50 employees) if they demonstrate hardship (if this paid leave would "jeopardize the viability of the business"), and for health care providers and emergency responders. Once this bill is enacted, regulations and procedures for making such requests are expected to be quickly issued.

Because this is a temporary expansion of FMLA, be mindful of potential interference and retaliation claims for violations of this law. A 100% tax credit will be provided for leave payments. This expansion of FMLA expires at the end of 2020.

**Self-Employment Tax Credit:** People who are self-employed but work for another employer (such as Lyft/Uber), will be eligible for a tax credit of up to two weeks of sick pay at their average pay (capped at \$511/day) if they are sick or, if caring for a family member, 2/3 of pay.

The FFCRA automatically goes into effect 15 days after enactment, but it may go into effect sooner than that at the discretion of the Treasury Secretary.

Please contact the lawyer you regularly work with regarding questions about how this legislation applies to you, or the author of this summary, Christine Hart, at [CHart@handfirm.com](mailto:CHart@handfirm.com) or (251) 694-6358.

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