

OLR Backgrounder: Employment- Related Provisions in the Families First Coronavirus Response Act

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Issue

This report describes the employment-related provisions in the federal Families First Coronavirus Response Act. More specifically, it summarizes the act's provisions on emergency family and medical leave, emergency paid sick leave, and emergency unemployment insurance. It does not discuss the related federal tax credits provided to employers for these provisions.

Summary

On March 18, 2020, the federal government enacted the [Families First Coronavirus Response Act](#) (P.L. No. 116-127). The act contains three employment-related provisions:

1. the Emergency Family and Medical Leave Expansion Act,
2. the Emergency Paid Sick Leave Act, and
3. the Emergency Unemployment Stabilization Access Act of 2020.

In general, the Emergency Family and Medical Leave Expansion Act expands the existing federal Family and Medical Leave Act to (1) allow employees to take "Public Health Emergency Leave" if they are unable to work because their children's schools or child care are closed due to a COVID-19 emergency declared by a federal, state, or local authority and (2) require their employers to pay them, within certain parameters, after their first 10 days of leave.

The Emergency Paid Sick Leave Act, generally requires employers to provide up to 80 hours of paid sick time to employees who are (1) quarantined due to COVID-19 or have its symptoms, (2) caring for someone who is quarantined, or (3) caring for their child whose school or child care has been closed due to COVID-19 precautions.

The Emergency Unemployment Insurance Stabilization and Access Act of 2020 provides \$500 million in federal funding for state unemployment systems and an additional \$500 million in funding for those systems in states with drastic spikes in unemployment that meet certain requirements (e.g., by easing benefit eligibility requirements and non-charging employers directly impacted by COVID-19). It also makes (1) extended unemployment benefits (i.e., those provided after a claimant exhausts his or her initial 26 weeks of benefits) 100% federally funded and (2) the states' unemployment systems eligible for interest-free federal loans through the end of 2022.

Emergency Family and Medical Leave Expansion Act

Covered Employers and Employees

The act expands the federal Family and Medical Leave Act (FMLA), until the end of 2020, to include Public Health Emergency Leave. The requirement to provide this new leave generally applies to employers that have less than 500 employees and those employees who they have employed for at least 30 calendar days.

FMLA

The existing federal FMLA covers employers with at least 50 employees and their employees who have worked for them for at least 12 months and 1,250 work-hours. It provides up to 12 weeks of unpaid leave every 12 months. For information about Connecticut's FMLA, see OLR Report [2015-R-0308](#).

However, the act also allows for certain exceptions. It allows employers of health care providers or emergency responders to choose not to allow these types of employees to take the public health emergency leave. It also allows the U.S. Secretary of Labor to issue regulations for good cause to (1) exempt employers with less than 50 employees if imposing the new requirements “would jeopardize the viability of the business as a going concern” and (2) exclude certain health care providers and emergency responders from eligibility.

Leave Uses

The act's Public Health Emergency Leave is available when an employee cannot work or telework because his or her minor child's child care provider, school, or place of care is unavailable due to a public health emergency (i.e., an emergency with respect to COVID-19 declared by a federal, state,

or local authority). An employee who needs to take public health emergency leave must notify his or her employer as practicable.

Paid Leave

Under the act, the first 10 days of the new leave may be provided as unpaid leave by the employer. However, employees may choose to substitute any paid vacation, personal, or sick leave that they have accrued.

After an employee's first 10 days of leave, the act requires the employer to provide paid leave. The employee's pay during the leave cannot be for less than two-thirds of the employee's regular pay rate for the number of hours that the employee would otherwise be normally scheduled to work. However, the pay cannot exceed \$200 per day or \$10,000 in the aggregate.

For employees with variable work schedules, the pay during the leave must be based on the employee's average daily work-hours over the six months preceding the leave. If the employee did not work over that period, the paid leave must be based on the employee's reasonable expectation at the time of hire for the number of daily work-hours that the employee would normally be scheduled to work.

Job Protection

As with the conventional FMLA, the act generally requires that employees who return from public health emergency leave be returned to the positions they held before taking leave, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

Small Business Exception. However, the act also provides a limited exception to this requirement for employers who have fewer than 25 employees. These employers qualify for the exception if:

1. their employee took public health emergency leave;
2. the employee's position no longer exists due to economic conditions or other changes in the employer's operating conditions (a) that affect employment or (b) are caused by the public health emergency during the employee's leave;
3. the employer makes reasonable efforts to restore the employee to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment; and
4. if the above efforts fail, the employer makes reasonable efforts to contact the employee if an equivalent position becomes available within a one-year period.

Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act generally requires employers to provide paid sick time to an employee who cannot work or telework because the employee:

1. is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. has COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for someone who (a) is subject to a COVID-19 quarantine or isolation order or (b) has been advised to self-quarantine for COVID-19 concerns;
5. is caring for his or her child whose school, place of care, or child care provider has been closed or is unavailable due to COVID-19 precautions; or
6. has a substantially similar condition specified by the Secretary of Health and Human Services in consultation with the secretaries of Labor and the Treasury.

The paid sick time requirement expires on December 31, 2020.

Covered Employers and Employees

The act's provisions apply to private-sector employers that (1) engage in commerce, or in any industry or activity affecting commerce, and (2) have less than 500 employees. It covers any of their employees (except for agricultural workers employed by an immediate family member). The act also applies to all public-sector employers, regardless of their size, although it does not include certain public sector employees (e.g., state or local legislative employees and certain policy-making political appointees). It also allows the labor commissioner to exclude certain employees (healthcare providers and emergency responders) and small employers through regulations (see below).

Paid Sick Time

Duration. The act entitles full-time employees to 80 hours of paid sick time. For a part-time employee, the duration of paid sick time equals the number of hours the employee works, on average, over a two-week period. Any unused sick time does not carry over from one year to the next.

CT's Paid Sick Leave Law

Connecticut's paid sick leave law generally requires employers with at least 50 employees to provide up to 40 hours of paid sick time to certain types of "service workers," as defined in [CGS § 31-57r](#). Additional information about the law is available [here](#).

For part-time employees with variable work schedules, if an employer cannot determine the number of hours the employee would have worked, the employer must use the employee's average daily work-hours over the six months preceding the sick time. If the employee did not work over that period, the sick time must be based on the employee's reasonable expectation at the time of hire for the number of daily work-hours that the employee would normally be scheduled to work.

Sick Time Pay. The act sets two levels for the sick pay depending upon the employee's reason for using the sick leave. It generally requires that employees be paid their regular pay rate if the employee (1) is subject to a federal, state, or local COVID-19 quarantine or isolation order; (2) has been advised by a health care provider to self-quarantine; or (3) has COVID-19 symptoms and is seeking a medical diagnosis. However, an employee's sick pay for these reasons cannot exceed \$511 a day, and \$5,110 in the aggregate. If the employee's regular rate is less than the federal or state minimum wage (e.g., certain tipped employees), the employee must be paid at the federal or state minimum wage rate, whichever is higher.

At the second level, employees are entitled to two-thirds of their regular pay rate (or the applicable minimum wage) when they use their paid sick time (1) to care for someone who is quarantined; (2) to care for a child whose school, place of care, or child care provider has been closed or is unavailable; or (3) for a substantially similar condition specified by the Health and Human Services secretary. An employee's sick pay for these reasons cannot exceed \$200 a day and \$2,000 in the aggregate.

Employer Guidelines. The act also requires the labor secretary to issue guidelines to help employers calculate amount of paid sick time they must provide under the act. This must be done within 15 days of the law taking effect.

Employee Notice. Under the act, after an employee's first day of paid sick time, the employer may require the employee to follow reasonable notice procedures in order to continue receiving the paid sick time.

Employer Limitations. The act prohibits employers from requiring employees using paid sick time to search for or find a replacement employee to cover their hours. It also prohibits employers from requiring employees to use other employer-provided paid leave before they can use the paid sick time provided by the act.

Employer Notice Requirement

The act requires employers to post a notice of the act's requirements in a conspicuous place on their premises where notices to employees are customarily posted. It also requires the labor secretary to prepare a model notice that meets these requirements and make it publicly available.

Enforcement

Under the act, an employer who does not provide the required paid sick time, or who discharges, disciplines, or discriminates against an employee for taking paid sick time or filing a related complaint, is considered in violation of the Fair Labor Standards Act. Such an employer may be subject to a fine of up to \$10,000, up to six months imprisonment, or both, among other things.

Regulations

The act authorizes the labor secretary to issue regulations for good cause that:

1. exclude certain healthcare providers and emergency responders from eligibility for the act's paid sick time, including by allowing their employers to opt out;
2. exempt businesses with less than 50 employees from the pay sick time requirement when imposing it would jeopardize the business's viability as a going concern; and
3. carry out the act's purposes, including ensuring the act's consistency with the act's provision on public health emergency leave and the related tax credits provided by the Families First Coronavirus Response Act.

Rules of Construction

The act states that it does not diminish the rights or benefits provided to an employee by any other federal, state, or local law, collective bargaining agreement, or existing employer policy. It also does not require an employer to reimburse an employee for unused paid sick time when the employee stops working for the employer (e.g., at the employee's termination, resignation, or retirement).

Emergency Unemployment Insurance Stabilization and Access Act of 2020

Emergency Unemployment Grants

The Emergency Unemployment Insurance Stabilization and Access Act of 2020 provides \$1 billion in emergency unemployment grants to the states for administering their unemployment systems and paying unemployment benefits. The funds must be allotted proportionally to each state based on the amount of each state's wages subject to federal unemployment taxes. A state may only use

the grants to administer its unemployment law, including by taking steps needed to ensure adequate resources in periods of high demand.

Grant Requirements. The act requires that half of the funding (\$500 million) be granted to states that do the following:

1. require employers to notify employees about the availability of unemployment benefits;
2. ensure that unemployment benefit applications, and assistance with the application process, are available in at least two of the following ways – in-person, by phone, or online; and
3. notify applicants when an application is received and is being processed, and if an application cannot be processed, provide information about steps the applicant can take to ensure a successful application.

The act reserves the second half of the funding for grants to states with unemployment claims that increased by at least 10% over the same quarter in the previous year. To qualify for this funding, a state must express its commitment to maintain and strengthen access to the unemployment system, including through initial and continued claims. It must also take steps to ease claimants' eligibility requirements and access to unemployment benefits. These include (1) waiving work search and waiting-week requirements and (2) non-charging employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers (the act also makes a conforming change that allows states to take these steps).

Unemployment “Non-Charge”
“Non-charging” an employer generally allows the employer’s former employees to receive unemployment benefits without increasing the experience rate portion of the employer’s unemployment taxes.

Federal Funding of Extended Unemployment Benefits

For states that receive all of the emergency unemployment grant funding described above, the act also provides 100% federal funding for extended unemployment benefits. In general, extended benefits become available during periods of particularly high unemployment and provide an additional 26 weeks of benefits to claimants who have exhausted the 26 weeks of benefits initially provided by their state’s unemployment system. Under typical circumstances, the state and the federal government equally share the cost of providing extended benefits.

Interest-Free Loans

The act gives the states, through the end of 2020, access to interest-free loans from the federal government to help pay for their regular unemployment benefits (i.e., the benefits provided for the first 26 weeks of a claimant's unemployment).

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