



Client Alert

NEW U.S. SENATE LAW, COVID-19 CORONAVIRUS RESPONSE ACT: WHO IS COVERED AND WHAT ARE THE EXPANDED PAID LEAVE BENEFITS?

By Attorneys Rebecca Reif & Olivia Brooks

In response to the COVID-19 Coronavirus (COVID-19) outbreak in the United States, the U.S. Senate passed the "Families First Coronavirus Response Act" on March 18, 2020, which has now been signed into law. The expanded leave provisions are to become effective within 15 days of the enactment, or by April 2, 2020. The law is set to expire on December 31, 2020.

The Act contains two primary provisions pertaining to paid leave for employees who miss work as a result of the COVID-19 outbreak: (1) an emergency expansion of the Family Medical Leave Act (FMLA), and (2) a new law specific to paid sick leave.

This alert generally addresses who is covered under the new law and the expanded benefits; however, please contact legal counsel for more detailed or specific questions.

EXPANDED EMERGENCY PAID FAMILY LEAVE

* **Who is covered:** The Act, titled Amendments to the Family and Medical Leave Act of 1993 (FMLA), redefines "eligible employees" for purposes of the expanded COVID-19 related leave to those employees who have "been employed for at least 30 calendar days by the employer." As such, the normal FMLA requirements for an employee to have been employed for twelve months and have worked at least 1,250 hours in the preceding

calendar year are not applicable to the expanded family leave for COVID-19.

Additionally, in order to be covered, the employee must demonstrate a "qualifying need related to a public health emergency" which means, "the employee is 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 child care provider of such son or daughter is unavailable, due to a public health emergency." The Act further clarifies a public health emergency is "an emergency with respect to COVID-19 declared by a Federal, State, or local authority." Notably, the expansion of FMLA does not apply to an employee's own serious health condition, or the serious health conditions of immediate family members.

In addition, the expanded COVID-19 related family leave must only be provided by (1) public employers with more than one employee, and (2) private employers with fewer than 500 employees. However, the Act contains language authorizing the Secretary of Labor to issue regulations which would "exclude certain health care providers and emergency responders" from being an eligible employee as well as regulations which would "exempt small businesses with fewer than 50 employees ... when the imposition of such requirements would jeopardize the viability of the business as a going concern." The law also permits the employer of a health care provider or emergency responder to exempt them from the family paid leave amendments.

* **What are the expanded benefits:** An employer may give unpaid leave for the first ten days of leave, with an employee able to "substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave." After the first ten days of unpaid leave, an employer must provide *paid leave*. The Act provides the following general information when calculating paid leave: an employee must be paid "not less than two-thirds" of their regular rate of pay for the number of hours they would normally work. (Please note that the law provides formulas for the paid leave benefits for employees who have not been working or have varied work schedules). The Act also provides for a limit on paid leave at \$200 per day and \$10,000 over the course of the leave.

* **Additional considerations:** The new law also contains several provisions regarding when the right to restoration to the employee's prior position, or an equivalent, applies for employees who take expanded COVID-19 related family leave. Specifically, for employers with more than 25 employees, the right to restoration generally applies for a one-year period beginning at the earlier of (1) the end of the "public health emergency," and (2) twelve weeks after the employee's leave commences.

EXPANDED PAID SICK LEAVE

* **Who is covered:** Employees are to be paid sick time "to the extent that the employee is unable to work (or telework)" under six circumstances, all generally related to COVID-19.

Specifically, the following are the categories listed in which an employer must pay an employee sick leave:

1. The employee is subject to a Federal, State, or local quarantine or isolation ordered 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 an order as described in subparagraph (1) or has been advised as described in paragraph (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 child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
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.

The Act does not require an employee be employed with the employer for a specific amount of time before they are eligible for paid sick leave-alternatively, the Act provides paid sick leave must be available to employees *immediately*. In addition, an employee cannot be required to exhaust other available paid leave before utilizing this paid sick leave benefit.

Again, the COVID-19 sick leave must only be provided by (1) public employers with more than one employee, and (2) private employers with fewer than 500 employees. Similar to the above noted exceptions with FMLA, the Act provides that the Secretary of Labor can exempt health care providers and emergency responders or small businesses with fewer than 50 employees, based on hardship concerns. Employers of a health care provider or emergency responders can also exempt them from the sick paid leave amendments.

* **What are the expanded benefits:** The Act also provides a full-time employee is entitled to 80 hours of paid sick leave for the above six reasons. Part-time employees are entitled to "a number of hours equal to the number of hours that such employee works, on average, over a 2-week period."

The Act also makes distinctions for sick leave for reasons (1) - (3) for the leave noted above, which are generally related to the employee's own COVID-19 related reasons for leave. For these reasons for leave, paid sick leave is at the employee's regular rate of pay and cannot exceed \$511 per day and \$5,110 over the course of sick leave. For sick leave for the reasons (4) - (6) noted above, which are generally related to the employee caring for another's COVID-19 related reasons for leave, the employee is only paid two-thirds of the employee's regular rate of pay, and the total benefit cannot exceed \$200 per day and

\$2,000 over the course of sick leave.

In addition, the Act notes that employees who are separated from employment while on paid sick leave are not entitled to be paid out the remainder of any paid sick leave balances. An employee is only entitled to paid sick leave until their next scheduled work shift. Additionally, paid sick leave related to COVID-19 *does not* carry over from one year to the following year.

OTHER ASPECTS OF THE LAW

The new law does not address how or in what manner the expanded family paid leave benefit and paid sick leave benefit must be sequenced, if an employee applies for both. It also does not specifically address permitting employers to supplement employees receiving two-thirds pay with other forms of paid leave.

Any payments made under the expanded family paid leave or paid sick leave benefits will not be considered wages for purposes of payroll taxes under section 3111(a) of the Internal Revenue Code (social security) of 1986 or compensation for purposes of section 3221(a) of such Code (railroad retirement excise tax).

Under the new law, private employers will also be able to receive payroll tax credits for each calendar quarter for any amount equal to the amount paid of family paid leave or sick paid leave, subject to certain caps and other limitations.

Employers will be required to post notices regarding this Act in the next 7 days, and when such notice is published by the Secretary of Labor.

This document contains general advice and does not constitute legal advice. If you have any additional questions or would like additional detail on the general guidance provided here, please contact your labor and employment counsel for advice specific to your situation.

Links

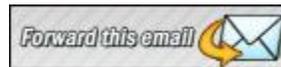
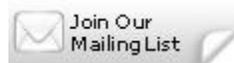
[Our Website](#)

[Client Alerts](#)

[Practice Areas](#)

[Attorneys](#)

[Contact Us](#)



About Ahlers & Cooney's Client Alerts

Our Client Alerts are intended to provide occasional general comments on new developments in Federal and State law and regulations which we believe might be of interest to our clients. The Client Alerts should not be

considered opinions of Ahlers & Cooney, P.C., and are not intended to provide legal advice as a substitute for seeking professional counsel. Readers should not under any circumstance act upon the information in this publication without seeking specific professional counsel. Ahlers & Cooney will be pleased to provide additional details regarding any article upon request. Additional copies of this Client Alert may be obtained by contacting any attorney in the Firm or by visiting the Firm's website at www.ahlerslaw.com.

©2020 Ahlers & Cooney, P.C. All Rights Reserved.

NOTICE TO THE PUBLIC The determination of the need for legal services and the choice of a lawyer are extremely important decisions and should not be based solely upon advertisements or self-proclaimed expertise. This disclosure is required by rule of the Supreme Court of Iowa. Memberships and offices in legal fraternities and legal societies, technical and professional licenses, and memberships in scientific, technical and professional associations and societies of law or field of practice does not mean that a lawyer is a specialist or expert in a field of law, nor does it mean that such lawyer is necessarily any more expert or competent than any other lawyer. All potential clients are urged to make their own independent investigation and evaluation of any lawyer being considered. This notice is required by rule of the Supreme Court of Iowa.