



## How to Comply with Families First: Details on Companies' New Duties under Recent Federal Legislation and Tax Credits

By [Karen Spaulding](#)

As a result of the harsh economic realities arising from the COVID-19 pandemic, on March 18, 2020, the federal government passed H.R. 6201, the Families First Coronavirus Response Act, which the President signed into law on that date. [The Families First Coronavirus Response Act](#) covers seven different pieces of legislation, including the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act and the tax credit relief discussed herein. Below is a short summary of the relevant provisions of this new legislation. Employers must comply with both acts no later than April 2, 2020.

### Emergency Paid Sick Leave Act (sunsets as of December 31, 2020)

All employers, with one exception not applicable to our clients, shall provide paid sick leave to full-time (80 hours) and part-time employees (based on a percentage of hours worked per two-week schedule) when the employee:

- (1) seeks medical care for COVID-19 symptoms which the employee exhibits;
- (2) needs to self-quarantine because of a governmental order or a health care provider recommendation;
- (3) needs to care for an individual or child seeking COVID-19 related medical care or their need to self-quarantine because of a governmental order or a health care provider recommendation;
- (4) needs to look after their child who is unable to go to school or a care provider is unavailable to look after the child due to COVID-19 precautions; or
- (5) is experiencing any other substantially similar situation as determined by the Secretary of Health and Human Services.

The paid sick leave shall not exceed: (a) \$511 per day and \$5,110 in the aggregate for sick leave use in categories 1 or 2 above; and (b) \$200 per day and \$2,000 in the aggregate, which is paid at 2/3rds the employee's usual rate of pay, for sick leave use in categories 3, 4, or 5 above.

The benefits under this Act shall be provided regardless of the amount of time the employee has been employed and must be used before any other regularly accrued paid time off, vacation, or sick leave is charged to the employee. These benefits do not carry over from one year to the next.

Companies must conspicuously post notice of these paid sick leave benefits. Employers may not discriminate against employees who take leave under this act, including but not limited to terminating or disciplining the employee. Employers who fail to comply with the terms of this act concerning paid sick leave or unlawful termination are subject to wage claims and federal penalties.

The **Emergency Family and Medical Leave Expansion Act** (“Expansion Act”) amends the Family and Medical Leave Act (FMLA) in several respects.

First, FMLA generally applies to companies with more than 50 employees if an employee of that company has worked for the employer for more than 1,250 hours in the prior 12-month period. The Expansion Act provides expanded family leave to any employee working for an employer with “fewer than 500 employees” for more than 30 days. There is an exemption for small businesses with fewer than 50 employees when compliance would “jeopardize the viability of the business as an ongoing concern.” This exemption must be requested from the Secretary of Labor.

Second, the FMLA’s qualifying events are expanded to include those related to the COVID-19 public health emergency declared by the federal, state or local government; i.e., when the employee’s child’s school or child-care facility is closed or the child’s care provider is unavailable due to a public health emergency. Child means a daughter or son under the age of 18.

Third, Expansion Act benefits are only payable between the period from March 18, 2020 to December 31, 2020.

Fourth, FMLA generally provides for a job-protected 12-week leave of absence for a qualifying event. Usually the leave is unpaid, except paid time off, vacation, and sick leave may be paid out initially until exhausted.

Under the Expansion Act, 12 weeks of job-protected family leave (mostly paid) is available. The first two weeks of the 12-week period may consist of unpaid leave; however the employee may overlap these first two weeks with paid sick leave as provided in the Emergency Paid Sick Act (see above), and the remaining 10 weeks must be paid.

The employee’s pay for the remaining 10 weeks of emergency leave is at 2/3rds of his or her usual pay. However, there is a cap on emergency leave at \$200 per day and \$10,000 in the aggregate.

Like the employee notice requirements under the FMLA, the employee must provide the employer notice of the need for Expansion Act leave as is reasonably practicable due to the emergency.

The employee must be restored to the same or similar position after the leave, with one exception not applicable under the FMLA. An employer with fewer than 25 employees is not required to restore the employee to his or her pre-leave position after the 12 weeks leave related to the public health emergency has concluded if certain exceptions are met. However, there is a continuing requirement of the employer to make reasonable efforts to contact the employee if an equivalent position with equivalent benefits becomes available within a one-year period beginning on the earlier of “(A) the date on which the qualifying need related to a public health emergency concludes; or (B) the date that is 12 weeks after the date on which the employee’s leave . . . commences.”

## **Tax Credits for Payments Made Under the Paid Sick Leave Act or the Expansion Act**

The good news for employers is that certain of these payments to employees are eligible for quarterly tax credits against an employer's portion of the employee's Social Security payments to ease the burden on businesses. Please consult with your tax adviser for the application of and/or limitations to these credits and allowances.

### **CONCLUSION**

The Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act may catch unwary employers off guard who are instead managing to keep their businesses afloat in the face of declining oil prices and COVID-19 health issues. Beatty & Wozniak, P.C. is here to help you navigate these uncharted waters. For immediate assistance regarding these new provisions, please contact [Karen Spaulding](#).

**An additional note of hope for the uninsured** - Coloradoans who do not have health coverage may participate in Connect for Health Colorado's Special Enrollment period from March 20, 2020 through April 3, 2020, with insurance coverage commencing April 1, 2020. For more information go to: [www.ConnectforHealthCO.com](http://www.ConnectforHealthCO.com)