

# Business Survival and Advancement Tips

## President Trump Signs Families First Coronavirus Response Act

March 19, 2020

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (the "Act"). This Act provides a wide range of federal assistance for those affected by COVID-19, including paid emergency sick leave, expansion of the Family Medical Leave Act (FMLA), and expanded unemployment insurance benefits.

Below is an overview of the major areas of the Act that impact employers:

### **Emergency Sick Leave**

Employers with fewer than 500 employees are required to provide employees with paid sick time to the extent the employee is unable to work or telework due to a need for leave because the employee:

- Is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- Has been advised by a health care provider to self-quarantine because of COVID-19;
- Is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- Is caring for an individual subject or advised to quarantine or isolation;
- 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**
- Is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Employees are to be paid at least their normal wage or the federal, state, or local minimum wage, whichever is greater.

- The employee's pay is reduced to two-thirds of their regular earnings if sick leave is taken to provide care to a family member.
- Paid sick leave is capped at:
  - \$511 per day and \$5110 in the aggregate for use during their own serious health condition; **or**
  - \$200 per day and \$2000 in the aggregate for use as a caretaker.

Full-time employees will receive 80 hours of sick leave under the new emergency leave program and employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking paid sick leave. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work.

### **Payment**

- Employers must pay for the paid sick leave benefits.
- Employers are entitled to a refundable tax credit equal to 100% of the qualified family leave wages paid by employers for each calendar quarter in accordance with the Emergency Family and Medical Leave Expansion Act.

Note: The emergency paid sick leave is in addition to any existing PTO, paid sick, and vacation benefits provided by the employer. This program will be administered by the Social Security Administration over the next year until these requirements expire on December 31, 2020.

### **Expanded Family and Medical Leave Act (FMLA)**

Employers with fewer than 500 employees are required to provide employees up to 12 weeks of paid, job protected FMLA leave to an eligible employee for “a qualifying need related to a public health emergency.”

This “qualifying need” is defined as:

- When an employee is unable to work or telework due to the need to care for a child, under the age of 18, if the child’s school or place of childcare has been closed; or
- The childcare provider is unavailable, due to a public health emergency.

An employee who has worked for the employer for at least 30 days prior to the designated leave and has a “qualifying need” is eligible to receive paid family and medical leave.

First 10 days of FMLA Leave:

- The 1<sup>st</sup> 10 days of leave are unpaid.
- Employees have the option of using their accrued paid leave for this initial period.

After the first 10 days of FMLA leave :

- The remaining FMLA leave must be paid at two-thirds of the employee’s regular rate, for the number of hours the employee would otherwise be scheduled to work.
- The Paid FMLA is capped at a max of \$200 per day and \$10,000 total.

The FMLA’s requirement that an employee be restored to the same or equivalent position after returning from leave does not apply to an employer with fewer than 25 employees if:

- The employee’s position no longer exists due to economic conditions or other changes in the employer’s operations that affect employment; **and**
- Are caused by the public health crisis during the period of leave.

***Note: This exclusion is subject to the employer making reasonable attempts to return the employee to an equivalent position and requires an employer to make efforts to return the employee to work for up to a year following the employee’s leave.***

The Act gives the Secretary of Labor the authority to issue regulations to:

- Exempt some small business with fewer than 50 employees when the imposition of such requirements would jeopardize the viability of the business as a going concern; **and**
- To exclude certain healthcare providers and emergency responders from the list of those employees eligible for leave.

***Note: Information on the exclusions for small businesses under 50 employees is not yet available.***

### **Payment**

- Employers must pay for the paid FMLA benefits.
- Employers are entitled to a refundable tax credit equal to 100% of the qualified family leave wages paid by employers for each calendar quarter in accordance with the Emergency Family and Medical Leave Expansion Act.

This program will become effective within 15 days of enactment and remain in effect until December 31, 2020.

### **Unemployment Benefits**

Each state has their own process for employees and employers when it comes to filing for unemployment. The U.S. Department of Labor has sponsored the following link as part of their resources on Coronavirus. This link provides access to each state’s unemployment guidelines:

<https://www.careeronestop.org/LocalHelp/UnemploymentBenefits/find-unemployment-benefits.aspx>

Here is an overview of some FAQ's for employers:

**Can I require my employees to stay home if they are sick with COVID-19?**

- Yes, you can require your employee to stay home.
- Your employee may file for unemployment benefits and a determination will be made concerning their eligibility. Determinations will be made on a case-by-case basis. However, please note that an individual must be physically able and available for full time work in order to qualify for unemployment benefits.

**If I have to close the doors of my business for 14 days because an employee is sick and other employees need to be isolated, how do my employees file for unemployment benefits?**

- Please direct your employees to your state's unemployment information – links provided above

**If I have to close the doors of my business for 14 days because an employee is sick and other employees need to be isolated, will I be liable for unemployment benefit charges?**

- You will be liable in the same way you would be for a layoff or a shut down.
- If the President declares a disaster that includes your state and your company, it is possible you may not be liable.

**Note: Employers must provide employees notification of the availability of unemployment compensation at the time of separation.**

**Coronavirus Testing**

Group health plans (including self-funded plans) and health insurance issuers offering group or individual health insurance coverage are required to provide coverage for COVID-19 testing and related services, without any:

- cost sharing requirements (including deductibles, copayments, and coinsurance);
- prior authorization; or
- other medical management requirements.

**SBA Disaster Loans**

While not part of the Families First Coronavirus Act passed on March 18, 2020, we understand the SBA has availability of loans for those who wish to apply. The link to SBA Disaster Assistance in Response to the Coronavirus is here:

<https://www.sba.gov/disaster-assistance/coronavirus-covid-19>

**Insurance and Loss Documentation**

Although we are expecting minimal if any coverage for business interruption on most insurance policies based on carrier initial responses, we suggest keeping good records of your lost revenue and extra expenses due to the Coronavirus. In addition, if you have a definable loss to talk with your broker about putting these claims in on possible lines of coverage that could respond. We prefer that the insurance carriers give a formal response that can possibly create some opportunity to discuss coverage. In addition, at this time, we are not sure how the federal or state governments may step in to help and it is good to have proper documentation to be able to define your loss.

**Contracts, Purchase Orders and Leases**

Consult with your legal counsel on what exists in your various legal agreements with all trading partners. There could be clauses in there that give you some relief to obligations based on the Coronavirus.

### **Other Useful Links**

Given the amount of information being sent on this subject, we have included some links below you may find useful

- **List & Links to all US States Health Departments:**  
<https://www.cdc.gov/publichealthgateway/healthdirectories/healthdepartments.html>
- **CDC Coronavirus Main Page:** <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- **CDC Coronavirus Business Guidance:** <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html>
- **CDC Coronavirus Travelers:** <https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html>
- **World Health Organization Coronavirus Main Page:** <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>
- **OSHA's Coronavirus Webpage:** <https://www.osha.gov/SLTC/covid-19/>

If you have any questions – please contact your Risk Advisor at Smith Brothers or GreenTree Risk Management, LLC – Smith Brothers risk management division

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