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Families First Coronavirus Response Act

The Families First Coronavirus Response Act was signed into law on March 18, 2020.

In the coming days and weeks, federal regulatory agencies, including the Department of Labor (DOL) and Health and Human Services (HHS), will provide guidance on how to execute or implement the new requirements. In the meantime, employers and advisors must rely on a good faith interpretation of the act's text.

Note: We are sharing everything we know below and will not be able to answer follow up questions about the act until agency guidance has been released, which will take some time. We will update this page when we have more information, and we encourage you to check here.

Summary

For certain circumstances related to COVID-19, employees will be eligible for:

- Up to two weeks of sick leave (full pay for self, 2/3 pay for family care) for illness, quarantine, or school closures.
- Up to 12 weeks of Family and Medical Leave Act (FMLA) leave for school closures (10 days unpaid and then up to 10 weeks at 2/3 pay).

Effective Date of Law

- The FMLA and Paid Sick Leave sections discussed below will go into effect on April 2, 2020 and expire December 31, 2020.
- It appears there is no retroactive application.

Key Elements for Employers

- FMLA expansion
- Paid sick leave
- Payroll tax credit
- Group health plan benefit mandate

Emergency FMLA Expansion

- **Covered Employers:** Employers with fewer than 500 employees are covered.
- **Covered Employees:** Any employee who has been employed for at least 30 calendar days, though employers can choose to exclude employees who are health care providers or emergency responders.

- **Covered Leave Purposes:** To care for a child under 18 of an employee if the child's school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency, defined as an emergency with respect to the coronavirus declared by a federal, state, or local authority.
- **Duration:** Up to 12 weeks of job-protected leave.
- **Compensation:**
 - No pay for first 10 days of leave (other paid time off, and emergency sick leave under the FFCRA, may be applied).
 - After 10 days, employers must pay two thirds of the employee's regular rate of pay for the number of hours they would normally be scheduled to work, capped at \$200/day and \$10,000 total.
- **Reinstatement to Position after Leave:**
 - The same reinstatement provisions apply as apply under the traditional FMLA. However, restoration to position does not apply to employers with **fewer than 25 employees** if certain conditions are met:
 - The job no longer exists because of changes affecting employment caused by an economic downturn or other operating conditions that affect employment caused by a public health emergency; and
 - The employer makes reasonable efforts to return the employee to an equivalent position, and makes efforts to contact a displaced employee if anything comes up within a year of when they would have returned to work.

Note: The act reserves the right for the Secretary of Labor to exclude certain care providers and first responders from the list of eligible employees and to exempt small businesses with fewer than 50 employees if business viability is jeopardized.

Emergency Paid Sick Leave

- **Covered Employers:** Employers with fewer than 500 employees.
- **Covered Employees:** All employees (no matter how long they have been employed), though employers may be able to exclude employees who are health care providers or emergency responders.
- **Covered Leave Purposes:**
 1. When quarantined or isolated subject to federal, state, or local quarantine/isolation order;
 2. When advised by a health care provider to self-quarantine (due to concerns related to COVID-19);
 3. When experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 4. When caring for an individual doing #1 or #2 (2/3 pay);
 5. When caring for a child whose school or place of care is closed due to COVID-19 (2/3 pay); or
 6. When the employee is experiencing any other substantially similar condition (2/3 pay).

Duration of Leave:

- Full time employees are entitled to 80 hours of paid sick leave.
- Part time employees are entitled to sick leave equal to the amount of hours worked on average over a typical two-week period.

Rate of Pay:

- Sick leave must be paid at the employee's regular rate of pay for leave used for the employee's own illness, quarantine, or care.
- Sick leave must be paid at two-thirds of the employee's regular rate if taken to care for a family

member or to care for a child whose school has closed, or if the employee's childcare provider is unavailable due to the coronavirus.

- Pay is capped at \$511/day and \$5,110 total for reasons 1, 2, and 3 described above.
- Pay is capped at \$200/day and \$2,000 total for reasons 4, 5, and 6 described above.

Interaction with Other Employer-Provided Paid Sick Leave and other Paid Leave:

- This act does not pre-empt existing state and local paid sick leave requirements.
- Employers cannot require employees to use other leave first.
- Sick leave provided for under the act does not carry over from year to year, and the requirements expire December 31, 2020.

Notice Requirements:

- Employers must post a model notice, which will be provided by the federal **government**.

Note: The act reserves the right for the Secretary of Labor to exclude certain care providers and first responders from the list of eligible employees and to exempt small businesses with fewer than 50 employees if business viability is jeopardized.

Payroll Tax Credit

- Applies to both the emergency FMLA expansion and the emergency sick leave.
- Dollar for dollar credit for sick leave and paid FMLA wages against the employer portion of Social Security taxes.
- Refund is possible for amounts that exceed what is available as a credit.
- Limits on what can be claimed mirror the caps for what must be paid.

Health Plan Benefit Mandate

- The act requires all insured and self-funded medical plans, including grandfathered plans, to cover diagnostic testing-related services for COVID-19 at 100 percent without any deductibles or co-pays.
- Examples include services provided by doctors, emergency rooms, and urgent care centers leading up to the decision that testing is needed, along with the actual lab-based testing.
- The mandate does not apply to treatment.

Read [US H.R. 6201](#)

FFCRA Payroll Tax Credit — Easing the Burden for Employers

On Friday, March 20, the U.S. Treasury, IRS, and U.S. Department of Labor announced their plans for making the paid leave provisions in the Families First Coronavirus Response Act (FFCRA) less burdensome for small businesses. Key points include:

- To take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form that will be released next week.
- The Department of Labor will release "simple and clear" criteria for businesses with fewer than 50 employees to apply for exemptions from the leave provisions related to school and childcare closures; and
- There will be a 30-day non-enforcement period for businesses making a reasonable effort.

We know that for many of our clients, business slowdowns related to the spread of COVID-19 have made it hard to imagine how they could bear any additional expenses. We encourage anyone with these concerns to read the linked announcement carefully.

The full announcement can be found here: [Treasury, IRS, and Labor Announcement on FFCRA Implementation](#).

Including the information in the link above, this is all we currently know about the payroll tax credit under the FFCRA and how to access or administer it. We will update Comply as soon as new information or guidance is available. You can learn more about the details of the leaves (who is covered, what it's for, duration, etc.) in the materials on this page.

COVID-19 and Flexibility in Mandatory, In-Person Signatures

Form I-9

On March 20, 2020, the Department of Homeland Security [announced](#) that effective immediately, the physical presence requirement of the *Employment Eligibility Verification, Form I-9*, has been temporarily suspended for employers and workplaces that are operating remotely due to COVID-19 related precautions. In other words, employers with employees taking physical proximity precautions due to COVID-19 (and operating remotely) **are not required** to review the employee's identity and employment authorization documents in the employee's physical presence.

The physical presence requirement that was temporarily suspended mandated that employers, or an authorized representative, physically examine, in the employee's physical presence, the unexpired document(s) the employee presents from the Lists of Acceptable Documents to complete the Documents fields in Form I-9's Section 2.

Employers must also be aware of the following regarding the temporary suspension:

- If there are employees physically present at a work location, then in-person verification of identity and employment eligibility documentation for Form I-9 continues to be required. However, if newly hired employees or existing employees are subject to COVID-19 quarantine or lockdown protocols, DHS will evaluate this on a case-by-case basis.
- Employers may designate an authorized representative to act on their behalf to complete Section 2 and may be any person the employer designates to complete and sign Form I-9 on their behalf. However, employers are liable for any violations in connection with the form or the verification process, including any violations of the employer sanctions laws committed by the person designated to act on the employer's behalf.

Form I-9, Section 2 Documents Must Be Inspected Remotely

Employers must still inspect the Section 2 documents but may do so remotely (for instance, over video link, fax or email). Employers must also obtain, inspect, and retain copies of the documents they inspect, within three business days so as to complete Section 2. Employers are also directed to:

- Enter "COVID-19" as the reason for the physical inspection delay in the additional information field of Section 2 once physical inspection takes place after normal operations resume; and
- Add "documents physically examined," with the date of inspection to either the additional information field of Section 2 or to section 3 (as appropriate) once the documents have been physically inspected.

Employers may implement remote document inspections until May 19, 2020 (“up to 60 days from the date of the announcement”) or within three business days after the termination of the National Emergency, whichever comes first. Importantly, employers who implement remote onboarding and telework policies must provide documentation for each employee. This burden rests solely with the employers.

In-Person Verification Required After Normal Operations Resume

Once normal operations resume, all employees who were onboarded using remote verification must report to their employer within three business days for in-person verification of identity and employment eligibility documentation they presented for their Form I-9. Once the documents have been physically inspected, the employer should add “documents physically examined” with the date of inspection to the Section 2 additional information field or to section 3, as appropriate.

Any audit of subsequent Forms I-9 would use the “in-person completed date” as a starting point for these employees only.

Extension on Inspections

Effective March 19, 2020, any employers who were served Notice of Inspections (NOI) by DHS during the month of March 2020 and have not already responded will be granted an automatic extension for 60 days from the effective date. At the end of the 60-day extension period, DHS will determine if an additional extension will be granted.

Employers are required to monitor the DHS and ICE websites for additional updates regarding when the extensions will be terminated, and normal operations will resume.

USCIS and Benefits Forms

On March 20, 2020, the U.S. Citizenship and Immigration Services (USCIS) [announced](#) that it will accept all benefit forms and documents with reproduced original signatures, including the Form I-129, *Petition for Nonimmigrant Worker*, for submissions dated March 21, 2020, and beyond. This flexibility is in response to the ongoing COVID-19 National Emergency. This means that a document may be scanned, faxed, photocopied, or similarly reproduced provided that the copy must be of an original document containing an original handwritten signature, unless otherwise specified.

For forms that require an original “wet” signature, per form instructions, USCIS will accept electronically reproduced original signatures for the duration of the National Emergency. This temporary change only applies to signatures. All other form instructions should be followed when completing a form. Individuals or entities that submit documents bearing an electronically reproduced original signature must also retain copies of the original documents containing the “wet” signature. USCIS may, at any time, request the original documents, which if not produced, could negatively impact the adjudication of the immigration benefit.

SBA Disaster Assistance in Response to COVID-19

The U.S. Small Business Administration (SBA) is offering designated states and territories low-interest federal disaster loans for working capital to small businesses suffering substantial economic injury as a result of the Coronavirus (COVID-19). Upon a request received from a state’s or territory’s Governor, SBA will issue under its own authority, as provided by the Coronavirus Preparedness and Response Supplemental Appropriations Act that was recently signed by the President, an Economic Injury

Disaster Loan declaration.

Read more on the [SBA's website](#)

IRS, Coronavirus (COVID-19), and High-Deductible Health Plans

On March 11, 2020, the Internal Revenue Service (IRS) released Notice 2020-15 for high deductible health plans and expenses related to 2019 novel coronavirus (COVID-19) stating that, until further guidance is released, a health plan that otherwise satisfies the requirements of a high deductible health plan (HDHP) under I.R.C. § 223(c)(2)(A) will not fail to be an HDHP merely because it provides health benefits associated with testing for and treatment of COVID-19 without a deductible, or with a deductible below the minimum deductible (self only or family) for an HDHP. Therefore, an individual covered by the HDHP will not be disqualified from being an eligible individual under § 223(c)(1) who may make tax-favored contributions to a health savings account (HSA).

This does not modify previous guidance with respect to the requirements of an HDHP in any manner other than with respect to the relief for testing for and treatment of COVID-19. Vaccinations continue to be considered preventive care under § 223(c)(2)(C) for purposes of determining whether a health plan is an HDHP. Rather, the notice provides flexibility to HDHPs to provide health benefits for testing and treatment of COVID-19 without application of a deductible or cost sharing. Individuals participating in HDHPs or any other type of health plan should consult their particular health plan regarding the health benefits for testing and treatment of COVID-19 provided by the plan, including the potential application of any deductible or cost sharing.

Read [Notice 2020-15](#)

CDC, OSHA, and Coronavirus

In response to the COVID-19 (coronavirus) outbreak, the U.S. Centers for Disease Control (CDC) issued:

- [Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease](#), providing recommended workplace strategies for employers and guidance on how to decrease COVID-19 spread, how to respond to outbreaks, and additional resources; and
- [Public Health Response to the Coronavirus Disease 2019 Outbreak](#), providing a chronological timeline and summary of the virus, cases reported in the United States, and the agency's public health response to the illness.

The CDC has also created the following posters for download:

- What you need to know ([English](#), [Spanish](#), [Chinese](#))
- What to do if you are sick ([English](#), [Spanish](#), [Chinese](#))
- Stop the spread of germs ([English](#), [Spanish](#), [Chinese](#))
- Symptoms of coronavirus ([English](#), [Spanish](#))

Additionally, the U.S. Occupational Safety and Health Administration (OSHA) has created a COVID-19 [website](#) for workers and employers addressing the disease, providing guidance, and other resources for preventing exposure to and infection with the virus. We recommend that employers review the CDC and OSHA websites frequently, as the COVID-19 outbreak continues to develop.

Read more on the [CDC](#)

HIPAA and COVID-19

In February 2020, the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) released a bulletin to ensure that Health Insurance Portability and Accountability Act (HIPAA) covered entities, and their business associates, are aware of the ways that patient information may be shared under the HIPAA Privacy Rule in an outbreak of infectious disease or other emergency situation. The bulletin also reminds covered entities that the protections of the Privacy Rule are not set aside during an emergency and discusses the following HIPAA topics:

- Sharing patient information
 - Treatment.
 - Public health activities.
 - Disclosures to family, friends, and others involved in an individual's care and for notification.
 - Disclosures to prevent a serious and imminent threat.
 - Disclosure to the media or others not involved in the care of the patient/notification.
 - Minimum necessary (for most disclosures, a covered entity must make reasonable efforts to limit the information disclosed to that which is the "minimum necessary" to accomplish the purpose).
- Safeguarding patient information.
- HIPAA's application to only covered entities and business associates.

The bulletin also provides links to the following resources:

- [HIPAA and Public Health](#)
- [HIPAA and Emergency Preparedness, Planning, and Response](#)
- [HIPAA Privacy Rule](#)
- [How federal civil rights laws apply in an emergency](#)

Review the [bulletin](#)