

**Families First
Coronavirus
Response Act**

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Under the Families First Coronavirus Response Act (“FFCRA”), certain employers with less than 500 employees are required to provide 80 hours (or 2 weeks) of paid leave to full-time employees (pro-rata rules would apply to part-time employees) on top of any other existing paid leave program of the employer to cover employees not working for the following:

- (1) the employee is subject to a Federal, State, or local quarantine or isolation order related to coronavirus;
- (2) the employee has been advised by a health care provider to self-quarantine due to coronavirus;
- (3) the employee is experiencing symptoms of coronavirus;
- (4) the employee is caring for an individual who is subject to an order described in (1) or has been advised as described in (2);
- (5) the employee is caring for their child because the school is closed or child care provider is unavailable due to coronavirus; or
- (6) the employee is experiencing a similar condition specified by the Secretary of Health and Human Services.

The payment of the paid leave is calculated based on the employee’s regular rate of pay for the number of hours the employee regularly works. For scenarios (1)-(3), the employee receives his or her regular pay. For scenarios, (4)-(6), the employer must pay at least two thirds of the employee’s regular rate of pay. The FFCRA puts caps on the daily and aggregate amounts employers would be required to pay. For scenarios described in (1)-(3) an employer will not be required to pay more than \$511 per day for an employee and \$5,110 in the aggregate. For scenarios (4)-(6) the employer will not be required to pay more than \$200 per day for an employee and \$2,000 in the aggregate.

The FFCRA also requires employers to provide paid FMLA leave for up to an additional 10 weeks if the employee is caring for their child in the event the child’s school is closed or the child care provider is unavailable due to a public health emergency. The payment of this paid leave cannot be less than 2/3 of the employee’s regular rate of pay. The FFCRA put caps on the daily and aggregate amounts employers would be required to pay by providing that an employer will not be required to pay more than \$200 per day and \$10,000 in the aggregate for each employee.

To assist with paying for these programs, employers will receive an advanced dollar for dollar payroll tax credit. Additionally, the Secretary of Labor has the authority to exempt businesses from the paid leave if the business has fewer than 50 employees and the above requirements would jeopardize the viability of the business.

It is unlawful for an employer to discharge, discipline, or in any other manner discriminate against an employee who takes the above kind of leave. Any violation by the employer will be considered a violation of the Fair Labor Standards Act of 1938 and subject to penalties.

Employers also need to be aware that if they re-hire an employee who was previously laid off by the employer as of March 1, 2020, or later that employee will have immediate access to the paid FMLA leave and will not need to wait 30 days for eligibility, provided, that the employee worked for the employer at least 30 days prior to being laid off.