

Families First Coronavirus Response Act: What We Know

Families First Coronavirus Response Act - H.R. 6201

On March 18, 2020, the President signed into law the Families First Coronavirus Response Act. Section 6008 provides a temporary 6.2% increase to each qualifying state and territory's 1 Federal Medical Assistance Percentage (FMAP) under section 1905(b) of the Social Security Act effective beginning January 1, 2020 and extending through the last day of the calendar quarter in which the public health emergency for COVID-19, including any extensions, terminates. You can view the [Increased FMAP FAQs](#) online.

What We Know

- The [Act](#) includes provisions for paid sick time and paid Family and Medical Leave Act (FMLA) requirements and applies to employers with 500 or fewer employees. Employers with 500 or more employees are exempt from this requirement.
- The Act uses the Fair Labor Standards Act (FLSA) definition of employer, meaning joint employers count as employers under the Act.
- Both paid leave and paid FMLA provisions of the Act allow an employer to exclude from these two provisions an employee who is a healthcare provider or an emergency responder.
 - Healthcare providers are defined under the Act as:
 - a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or
 - any other person determined by the Secretary to be capable of providing health care services.
- Employers with 50 or fewer employees can be exempted by the Department of Labor (DOL) from both the paid leave and paid FMLA provisions of the Act.
 - The Act is written to allow the DOL to create regulations or definitions to exempt employers with 50 or fewer employees.

For Paid FMLA Requirements of the Act

- To qualify for the paid FMLA under the Act, the employee must have been employed by the employer for 30 or more calendar days prior to taking leave.
- The first 10 days of leave are unpaid, but paid sick leave, Paid Time Off (PTO) or other pay mechanisms can be used during that time.
- Subsequent absences beyond the first 10 days under the Act are paid at 2/3s of the employee's normal rate of pay.
 - For variable hour employees, such as those typically in self-direction, the employer would calculate 2/3s pay on the number of hours the employee *would have* worked if employed.
 - OR, if that is unknown, then

- Use a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type.
- The total amount of paid FMLA is capped at \$200 per day with an aggregate capped amount of \$10,000.
- The employee's position must be provided to the employee upon return from this paid FMLA leave unless:
 - The employer has fewer than 25 employees and the position no longer exists related to the COVID-19 public health crisis.
- If the employer has greater than 25 employees, the employee must be reinstated in their position unless the position no longer exists, in which case the employer must reinstate the employee to an equivalent position, or notify the employee if an equivalent position becomes available for up to one year.

For Paid Sick Time Requirements of the Act

- Full-time employees are entitled to 80 hours of paid sick time under the Act
 - Full-time or part-time employment under the FLSA (which is applicable for FMLA) is not defined by the FLSA but rather by each employer.
- Part-time employees are entitled to the average number of hours the employee works in a 2-week period.
- Paid sick time under the Act does not carry over from one year to the next.
- Paid sick time under the Act applies to employees regardless of how long they have been employed by the employer.
- An employer cannot require the employee to use other paid leave prior to using the paid leave provided by the Act.
- Paid sick leave is capped at a total of \$511 per day or \$5110 in the aggregate or \$200 per day or \$2000 in the aggregate depending on the reason the leave is needed.
- Paying for paid sick time and paid FMLA under the Act:
- The employer can offset the cost of the employer portion of the Social Security and Medicare taxes with the cost of paid sick time and paid FMLA.

What Applied Self-Direction is Determining

- How does joint employment under the Act affect paying paid sick time and paid FMLA to an employee when that employee is jointly employed by an employer with 500 or more employees (e.g. a State, large agency or Agency with Choice, or a Managed Care Organization AND another entity, such as a consumer)?
- Are Agencies with Choice with 500 or more employees exempt from the paid sick time and paid leave requirements under the Act?
- Are employees providing Long-Term Services and Supports (LTSS) and/or Financial Management Services (FMS) entities defined as Health Care Providers under the Act per this definition

referenced in the Act, “any other person determined by the Secretary to be capable of providing health care services.”?

- We are working with our Federal partners to suggest language that applies to LTSS providers.
- What criteria will the Department of Labor use to exempt employers with 50 or fewer employees from the Act?
- What are the mechanics around when the tax credit is applied for Social Security and Medicare tax to offset the cost of paid sick time and paid FMLA?
 - Can tax liabilities be reduced when the deposit is made or only when the return is filed? The answer has major cash flow implications.