



Tanner & Guin

Coronavirus COVID-19

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FAMILY FIRST CORONAVIRUS RESPONSE ACT

- On March 18, 2020, Congress passed H.R. 6201 and the President immediately signed, the Families First Coronavirus Response Act into law. The new law includes many emergency measures to address COVID-19.
- The provisions of the Act titled the **Emergency Family and Medical Leave Expansion Act of 2020** and the **Emergency Paid Sick Leave Act** will have the greatest impact on employers and their relationship with their employees.

FAMILY FIRST CORONAVIRUS RESPONSE ACT

- Emergency Paid Sick Leave and the Expanded FMLA leave provisions are effective April 2, 2020.

H.R. 6201 LEGISLATIVE BACKGROUND

- Only employees who are unable to work or work remotely due to a school closing would be entitled to the 12 weeks of paid leave under the new law. Eligible employees will be paid two-thirds of their typical earnings with a cap of \$200 per day. The law also exempts healthcare personal and emergency responders.

EMERGENCY PAID SICK LEAVE ACT

- This part of the new law requires employers with fewer than 500 employees to provide *up to* 80 hours of paid sick leave to all employees for certain covered purposes related to COVID-19. Here are the key components of the paid sick leave mandate:

QUALIFICATIONS EMERGENCY PAID SICK LEAVE ACT

- 1.) Full-time employees are entitled to 80 hours of paid sick leave
- 2.) Part-time employees are entitled paid sick leave for the number of hours equal to the hours the employee works over a 2-week period (*if the part-time employee works 15 hours per week, they would be entitled to receive 30 hours in paid sick leave*).
- 3.) The paid sick leave may be used by employees immediately with no minimum employment period for eligibility.

QUALIFICATIONS EMERGENCY PAID SICK LEAVE ACT

- 4.) The paid sick leave may be used when an employee is unable to work (or work remotely) because:
 - i) Employee is subject to a Federal, State, or local quarantine/isolation order;
 - ii) Employee has been advised by a health care provider to self-quarantine due to COVID-19-related concerns;
 - iii) Employee is experiencing COVID-19 symptoms and seeking a medical diagnosis;

QUALIFICATIONS EMERGENCY PAID SICK LEAVE ACT

- iv) Employee is caring for an individual who is subject to an order as described in subparagraph (I) or has been advised as described in paragraph (ii);
- v) Employee is caring for a son or daughter because their school or place of care has been closed, or their childcare provider is unavailable, due to COVID-19 precautions; or
- vi) For other substantially similar conditions that may be later specified by the Secretary of Health and Human Services.

QUALIFICATIONS EMERGENCY PAID SICK LEAVE ACT

5.) If an employee uses paid sick leave for reasons i, ii, or iii then the employer must pay the employee their full earnings, with a cap of \$511 per day (\$5,110 total). If the employee uses paid sick leave for reasons iv, v or vi then the employee must be paid in an amount not less than two-thirds of the employee's earnings, with a cap of \$200 per day (\$2,000 total).

QUALIFICATIONS EMERGENCY PAID SICK LEAVE ACT

6.) The paid leave provided by the Emergency Paid Sick Leave Act is *in addition to* any paid leave under any existing paid leave policy, and employers are prohibited from changing their existing leave policy in any way to avoid this new requirement. Employers are required to post a notice regarding employees' rights under the new law (a model notice will be made available for this purpose).

QUALIFICATIONS EMERGENCY PAID SICK LEAVE ACT

- 7.) An employer may not require an employee to use any other paid leave provided by the employer to the employee before the employee uses the paid sick time.
- 8.) A healthcare provider or an emergency responder employer may elect to exclude its employees from the Emergency Paid Sick Leave Act.

QUALIFICATIONS EMERGENCY PAID SICK LEAVE ACT

- 9.) The U.S. Department of Labor (“DOL”) may promulgate regulations allowing hardship exemptions for employers with fewer than 50 employees “when the imposition of such requirements would jeopardize the viability of the business as a going concern.
- 10.) The Emergency Paid Sick Leave Act takes effect no later than 15 days after the enactment of the Families First Coronavirus Response Act and expires on December 31, 2020.

EMERGENCY PAID SICK LEAVE ACT

- OTHER PROVISIONS

- Notice

- Employer must post notice in conspicuous places where notices are customarily posted (DOL to provide model notice)

- Prohibitions

- Cannot require employee to use other paid leave first
- Cannot require employee to find a replacement employee
- Cannot terminate, discipline, or discriminate against an employee who takes paid leave (or engages in related protected activity)

EXPANSION
of the
FAMILY
MEDICAL
LEAVE ACT

- This part of the law temporarily expands the Family and Medical Leave Act (“FMLA”) by providing eligible employees with up to 12 weeks of FMLA leave for a qualifying need related to COVID-19.

EXPANSION of the FAMILY MEDICAL LEAVE ACT

- Here are the key provisions of the proposed FMLA expansion are as follows:
- 1.) Applies to employers with less than 500 employees, **which will include employers not currently covered by the FMLA.**

EXPANSION of the FAMILY MEDICAL LEAVE ACT

Are employees at subsidiary / related entities included?

- FMLA “integrated employer” test (29 C.F.R. § 825.104 (c) (2))
- Four Factors: common management; interrelation between operations; centralized control of labor relations; degree of common ownership/financial control
- CAUTION:** consider potential adverse legal implications of claiming that separate entities are an integrated employer

EXPANSION of the FAMILY MEDICAL LEAVE ACT

- 2.) Gives the DOL Secretary authority to exempt health care providers and emergency responders, as well as small businesses with fewer than 50 employees if the law's requirements jeopardize the viability of the business.
- 3.) Covers and provides the leave benefit to employees who have been employed for at least 30 calendar days.

EXPANSION of the FAMILY MEDICAL LEAVE ACT

- 4.) Leave is available to employees who are unable to work (or work remotely) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or their child care provider is unavailable, due to COVID-19.

EXPANSION of the FAMILY MEDICAL LEAVE ACT

- 5.) First 10 days of leave may be unpaid, but employees may substitute any accrued paid leave, including up to 2 weeks of paid sick leave provided pursuant to the Emergency Paid Sick Leave Act (discusses above), during this time.
- Employee must provide the employer with “such notice of leave as is practicable”

EXPANSION
of the
FAMILY
MEDICAL
LEAVE ACT

- 6.) The rest of leave provided beyond the 10-day period must be paid by the employer in an amount not less than two-thirds of an employee's regular earnings, however, employers are not required to pay an employee more than \$200 per day (\$10,000 total).

EXPANSION of the FAMILY MEDICAL LEAVE ACT

- 7.) The law provides that employees working for employers with 25 or more employees must be reinstated to their jobs after returning from leave unless their job no longer exists due to COVID-19-related economic conditions. In which case, an employer has a continuing obligation to make reasonable efforts to contact the employee if an equivalent position became available.

EXPANSION
of the
FAMILY
MEDICAL
LEAVE ACT

- 8.) The U.S. DOL may promulgate regulatory hardship exemptions for employers with fewer than 50 employees “when the imposition of such requirements would jeopardize the viability of the business as a going concern.”

EMPLOYER TAX CREDITS (IRS-2020-57)

- Employers who must pay “qualified sick leave wages” because of the ACT are entitled to a tax credit equal to 100% of such wages, less applicable deductions and limitations.
- The credit is applied against the employer’s share of Social Security payroll taxes for all employees.
- Essentially, the federal government is requiring the employers to front the costs of the Act but will reimburse all or some of these costs through the tax credits.

EMPLOYER TAX CREDITS

- The primary limit on the credit is that the employer cannot receive a credit in excess of \$511 per day per employee who is receiving payments under the Act.
- However, if the employee is paid because they are taking care of someone else, rather than sick themselves, or because the employee is on leave due to an HHS-specified condition, the limit is reduced to \$200 per day.
- Both of these credits are capped at 10 days of credit per employee.

EMPLOYER TAX CREDITS

- The employer can only take these credits from the total amount of payroll taxes they pay for all employees.
- If an employer has more credits than available payroll tax to offset, the excess is refunded as an overpayment of tax. So, the employer still gets the benefit of the credit, just not immediately.

EMPLOYER TAX CREDITS

- There is an additional credit available to employers who must pay employees under the ACT who take additional FMLA leave. The employer gets up to \$200 per day of FMLA leave taken under the Act, capped at a total of \$10,000 per employee.

EMPLOYER TAX CREDITS

- Finally, employers also get a credit for any group health plan costs and for the 1.45% Medicare payroll tax incurred on qualified wages.
- The credits are equal to the proportion of costs and taxes, respectively, incurred on behalf of employees as a result of paying them qualified wages under the Act.

SELF-EMPLOYED TAX CREDITS

- Self-employed individuals also get credits that are similar to those described above for employers.
- If they must take off work because of the coronavirus, they are essentially treated as an employee, receiving the same credit for \$511 per day if they are sick and \$200 per day if they are taking care of someone else.
- There is an additional limitation, which is 100% of the person's average daily self-employment income if the individual is sick themselves, of 67% of average daily self-employment income if they are taking care of someone else.

SELF- EMPLOYED TAX CREDITS

- There is also a credit that is similar to the FMLA credit the employers get.
- If a self-employed individual takes what is the equivalent of the expanded FMLA leave, they get a credit for all foregone average daily self-employment income for up to 50 days, but limited to the lesser of \$200 per day or 67% of their annual self-employment income.

THE
CORONAVIRUS
AID, RELIEF,
AND
ECONOMIC
SECURITY
(CARES) ACT

This legislation has been amended to serve as the legislative vehicle for the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

THE CARES ACT

Provides recovery checks to most Americans; expanded unemployment benefits to those unable to work; forgivable loans to small businesses to meet their expenses; assistance to distressed corporations with extra oversight of that aid; plus additional resources for healthcare providers and governments at the stat & local level to deal with the COVID-19 pandemic.

THE CARES ACT

Assistance For American Workers, Families, & Businesses

- Recovery Rebates: rebate checks up to \$1200 for individual U.S. residents (\$2400 for married joint filers) who aren't dependents and have SS#.
- Amounts increase by \$500 for each dependent child.

THE CARES ACT

- Recovery Rebate checks reduced for higher income taxpayers, phasing out at \$75,000 adjusted gross income & \$150,000 AGI for married filers.
- The IRS would base these AGI amounts on taxpayer's 2019 tax return if filed, if not on 2018.
- IRS will Direct Deposit those who have these accounts or mail the checks for those who do not.

THE CARES ACT

Unemployment Enhancements:

- A temporary Pandemic Unemployment Assistance program would be created through 12/31/2020 to provide payments to those who wouldn't be traditionally eligible for unemployment benefits, including the self-employed, independent contractors, those with limited work history, and others who are unable to work as a direct result of the coronavirus public health emergency.
- An additional \$600 per week payment would be made to each recipient of unemployment insurance or PUA program for up to four months.

THE CARES ACT

Individual & Family Tax Relief

- The 10% early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts would be waived for coronavirus-related purposes.
- Income from these distribution would be subject to tax over three years
- Taxpayer could recontribute the funds to an eligible retirement plan within three years without regard to that year's contribution cap.

THE CARES ACT

Coronavirus-related distributions would include those:

- Made to an individual diagnosed with COVID-19;
- Whose spouse or dependent is diagnosed with COVID-19,
- Who experience adverse financial consequences as a result of being quarantined, furloughed, laid off, have work hours reduced, are unable to work due to lack of child care, closing or reduced hours of a business owned or operated by the individual, or other factors as determined by the Treasury Secretary.

THE CARES ACT

Business:

- Employers whose operations were fully or partially suspended due to a coronavirus-related shutdown order, or whose gross receipts declined by more than 50% compared to the same quarter the prior year, would be eligible for an employee retention credit.
- Refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis and based upon qualified wages paid to the employees.

THE CARES ACT

Businesses- Employers with:

- Over 100 full-time employees, qualified wages are wages paid to employees when they aren't providing services due to the above-described COVID-19 circumstances.
- 100 or fewer full-time employees, all employee wages would qualify for the credit, whether the employer is open for business or subject to shut-down order.
- The credit would be provided for the first \$10,000 of compensation, including health benefits paid to an eligible employee or incurred from 3/13/2020 – 12/31/2020.

THE CARES ACT

Businesses:

- Employers & self-employed individuals would be allowed to defer, payment of the employer share of the Social Security tax they otherwise are responsible for paying (6.2% SS tax on employee wages)
- The deferred employment tax would be paid over the following two years with half paid by 12/31/2021.
- Limitations on the ability of companies to use net-operating losses from prior years in the current tax year would be relaxed.

THE CARES ACT

- Keeping Americans Paid & Employed
 - The new Paycheck Protection Program is to make loans to small businesses with 500 employees or fewer of that otherwise meet the current Small Business Administration (SBA) size standards; self-employed individuals & “gig economy” workers; and certain non-profits, including 501(c) organizations, 501 (c)(19) veteran organizations, and tribal businesses with under 500 employees.

THE CARES ACT

Paycheck Protection Program:

- Loans under this program would equal 250% of an employer's average monthly⁶ payroll, up to a maximum loan amount of \$10 million, and would have a 100% federal guarantee.
- Covered payroll costs include salary, wages, and payment of cash tips up to an annual pay rate of \$100,000; employee group healthcare benefits, including insurance premiums; retirement contributions; and covered leave.

THE CARES ACT

- Businesses:
 - Borrowers would be eligible for loan forgiveness equal to the amount spent by the borrower on payroll costs during an 8-week period after the loan origination date (including additional wages to tipped workers), interest payment on any mortgage incurred prior to 2/15/2020, rent payment on a lease in force prior to that date, and utility payment for service which began prior to that date.

THE CARES ACT

Businesses:

- Loan forgiveness amounts couldn't exceed the principal amount of the loan
- Forgiveness amounts would be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25% of their prior year compensation.

THE CARES ACT

Businesses:

- Loan amounts not forgiven after one year would be carried forward as ongoing loan with a maximum term of 10 years, at a maximum of 4% interest, while the 100% loan guarantee would remain intact.

THE CARES ACT

Businesses:

- To encourage employer to rehire employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off wouldn't be penalized for having a reduced payroll at the beginning of the loan period.

THE CARES ACT

Businesses:

- Loans would be available immediately through SBA certified lenders.
- The SBA would be required to streamline the process to bring additional lenders into the program and the Treasury Secretary is authorized to expedite the addition of new lenders.
- SBA is required to pay all principal, interest, and fees on all existing SBA loan products for six months to provide relief to small businesses negatively affected by COVID-19.

THE CARES ACT

Consumer Protections:

- Credit reporting agencies who agree to account forbearance or to modified payments with respect to an obligation or account of a consumer impacted by COVID-19 is required to report that obligation as either “current” or the status reported prior to the accommodation.
- This protection begins 1/31/2020 and end at the later of 120 days after enactment or 120 days after the termination of the COVID-19 national emergency declaration.

THE CARES ACT

Supporting the Healthcare System:

- The Strategic National Stockpile (SNS) can stockpile medical supplies needed for testing.
- Provide liability protection for manufacturers of personal protective equipment.
- The FDA would prioritize & expedite the review of drug applications & inspections to prevent or mitigate a drug shortage.
- Manufacturers would be required to make contingency plans to ensure a backup supply of products.

THE CARES ACT

Healthcare Access for COVID-19

Patients:

- Clarify that all diagnostic testing for COVID-19 is to be covered by private insurance plans without cost sharing.
- Free coverage without cost sharing would be provided within 15 days for a COVID-19 vaccine that has in effect a rating of “A” or “B” with proper recommendations.

THE CARES ACT

- There is also a credit that is similar to the FMLA credit the employers get.
- If a self-employed individual takes what is the equivalent of the expanded FMLA leave, they get a credit for all foregone average daily self-employment income for up to 50 days, but limited to the lesser of \$200 per day or 67% of their annual self-employment income.

COVID-19

- WHAT SHOULD WE DO?

COVID-19 Guidelines - 15 Days to Slow the Spread

- IF YOU FEEL SICK, stay home. Do not come to work. Contact your medical provider.
- IF YOUR CHILDREN ARE SICK, keep them at home. Do not bring them here.
- IF SOMEONE IN YOUR HOUSEHOLD HAS TESTED POSITIVE for the Coronavirus, keep the entire household at home. Do not go to work, school or out in public.
- IF YOU ARE AN OLDER PERSON, stay home and away from other people.
- IF YOU ARE A PERSON WITH A SERIOUS UNDERLYING HEALTH CONDITION that can put you at increased risk (for example, a condition that impairs your lung or heart function or weakens your immune system), stay home and away from other people.

Do Your Part To Slow The Spread Of The Coronavirus

- Even if you are young, or otherwise healthy, you are at risk and your activities can increase the risk for others. It is critical that you do your part to slow the spread of the coronavirus.

Avoid Discretionary Travel

- Shopping trips- weigh the risk, it can probably wait.
- Social Visits – do not visit or allow individuals in your home whom you do not feel comfortable with asking if they have been in contact with anyone that has been sick.
- Groceries – order online and pick up or have them delivered to your home.
- We will communicate updates to you via email as we are aware of changes. However, you should stay informed on what is happening at the City, State and National levels.

What to Expect Next

- Accept that every day brings new facts and guidance. We must try to plan, but next week will be VERY different and then the next week also. Expect plans to change as new information is given.
- Expect that cases will rapidly increase in all areas and disruptions in travel, gatherings, business, and education will occur.
- Consider that an Italy –like response may be a wise move to limit spread.
- We need to be careful of the message we send to others, not to dark versus being Pollyanna.

Adapting More than Preparing

- Is your Remote / VPN ready?
- Do you have a place in your home to work?
- Shelter in Place –means finding a safe location indoors and staying there until you are given the “all clear”. Are you prepared at home?
- New Federal and State Legislation is in place to help employers make decisions that will greatly impact their business; more to come.
- Guide your actions by public health guidance.
- Avoid knee jerk decisions.

Maximum Social Separation at Work.

- Follow the Social Distancing Guidelines.
- Don't congregate in offices, workrooms, kitchens of waiting areas.
- Bring your lunch and eat at your own desk or away from others. Wipe down that area before you leave.
- Conduct as much business as possible via email telephone, teleconference or facetime.
- If you must meet, keep the meeting short, meet in the conference room and avoid shaking hands.
- Pick up after yourself, place trash in cans so it is not left out on your work area.
- If you have concerns, speak to your supervisor.

COVID-19

FREQUENTLY
ASK
QUESTIONS!

COVID-19 Questions?

How much information can an employer request from an employee who says they are sick?

- ADA generally prohibits “disability-related” questions and medical examinations
 - ADA contains an exception where there is a “direct threat of harm” to the health and safety of employee or coworkers
 - EEOC: Not a violation of the ADA to measure body temperatures

Note: some individuals with COVID-19 do not have fever

- EEOC: Not a violation of the ADA to require a fit for duty release for an individual who has been away due to concerns of COVID-19

COVID-19 Questions

- **What should an employer do if an employee discloses that they have been in close contact with a person who tested positive for COVID-19?**
 - According to CDC guidance, individuals who have had close contact with a person diagnosed with COVID-19 should self-quarantine. Employers can require an employee who has been exposed to the virus to stay at home
 - Notify Human Resources
 - Follow directions regarding disinfection
 - Work with state/local health department to identify potential contacts

COVID-19 Questions?

- **Can an employer tell employees if a co-worker has tested positive for the coronavirus or other communicable diseases?**
 - No. The Americans with Disabilities Act (ADA) privacy rules restrict employers from sharing personal health information of an employee.
 - Employers should inform employees that possible exposure has occurred in the workplace without disclosing any identifying information about the individual who tested positive.

COVID-19 Questions?

- What steps can employers take to keep operating the business?
 - Prepare for increased absences as schools, day care etc. close down
 - Stagger shifts, lunches, work remotely
 - Minimize exposure between each other and clients or visitors
 - Know there will be interruptions and changes daily



Tanner & Guin

Thank You!

If you have additional questions,
please call our office at
205-633-0200