



March 19, 2020

UPDATE: CONGRESS PASSES THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

This is an update to Monday's Dunn Carney Employment Law News release "COVID-19: Practical Answers to Employers' FAQs." Today, Congress passed the "Families First Coronavirus Response Act" (H.R. 6201) which becomes effective 15 days from the date it is signed into law. The law sunsets on December 31, 2020.

Following is a summary of the law's key provisions related to your obligations as an employer.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (AMENDING THE FEDERAL FAMILY AND MEDICAL LEAVE ACT)

1. **What is required?** Employer-paid, protected leave of up to 12 weeks if an employee must stay home to care for a child whose school is closed or whose care provider is unavailable due to the COVID-19 emergency. Leave is paid at 2/3 of the employee's regular rate (with a cap of \$200/day and a \$10,000 maximum).
2. **Which employers are covered?** The new law covers all employers *with fewer than 500 employees*. Employers with fewer than 50 employees may seek a hardship exemption if compliance would jeopardize the viability of the business as a going concern.
3. **Which employees are eligible?** Any employee who has been employed for at least 30 days when leave is requested. Employees laid off before requesting leave are not eligible. (Note: laid off employees may be eligible for unemployment benefits through the state.)
4. **Other important details:**
 - a. The first 10 days of leave is unpaid, but employees may choose to use any other paid leave they have available. However, employers may not require employees to do so.
 - b. Employers with 25 or more employees must restore the employee to their job at the end of the leave period. If the position no longer exists, due to economic hardship, the employer must make a reasonable effort to locate another position for the employee and do so for a 1 year period (if no position exists when they are ready to return to work).
 - c. Employers may not discriminate against employees who take paid sick leave under the law.
 - d. Employers will be entitled to a credit against payroll taxes.



EMERGENCY PAID SICK LEAVE ACT

- 1. What is required?** 80 hours of employer-paid sick leave for a qualifying reason for full-time employees. Part-time employees receive pay for the hours they regularly work over a 2 week period. Paid sick time is capped at either \$511/day (\$5,110 max) or \$200/day (\$2,000 max) depending on the reason the employee takes sick time. Sick time for some purposes is compensated at 2/3 of the employee's regular rate of pay.
- 2. Which employers are covered?** All employers with less than 500 employees.
- 3. Which employees are eligible?** All employees, regardless of how long they've worked for the employer. Employees laid off before requesting leave are not eligible. (Note: laid off employees may be eligible for unemployment benefits through the state.)
- 4. What are the qualifying reasons?**
 - a. The employee is subject to (or caring for a family member subject to) a quarantine or isolation order related to COVID-19.
 - b. The employee has been advised by a health care provider to self-quarantine (or is caring for someone advised to self-quarantine) due to concerns related to COVID-19.
 - c. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 - d. The employee is caring for a child whose school has been closed or whose care provider is unavailable due to COVID-19 precautions.
 - e. Other substantially similar reasons as determined by the government.
- 5. What about the paid time off we already provide to employees (including paid sick time required under Oregon and/or Washington law)?**
 - a. The emergency paid sick leave under this new federal law is *in addition* to any paid time off the employer already provides (or that is required by state law).
- 6. Other important details:**
 - a. Employers may not require employees to search for or find replacement employees to cover the hours they are using paid sick time.
 - b. Employers may not require the use of other paid leave before an employee may use the paid leave available under the new law.
 - c. Employers are required to post notice about the requirements of the new law and the Department of Labor will be issuing a model notice for that purpose.
 - d. Employers may not discriminate against employees who take paid sick leave under the law.
 - e. Employers will be entitled to a credit against payroll taxes.



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