

## Labor & Employment Alert

# Emergency Paid Sick Leave Act

**Effective:** April 1, 2020  
**Expires:** December 31, 2020  
**New Regs:** Due April 1, 2020  
**Part of:** Families First Coronavirus Response Act

### CATEGORIES OF PAID LEAVE

- Employers must provide PAID leave if an employee “cannot work (or telework)” due to any of the following:
  1. Is subject to government quarantine order.
  2. Has been advised by “a health care provider” to self-quarantine.
  3. Has COVID-19 symptoms and is seeking medical diagnosis.
  4. Is caring for someone in Categories 1 or 2 above.
  5. Is caring for child in circumstances similar to the FMLA Expansion Act (see companion Client Alert).
  6. Has “any other substantially similar condition” if it is specified by federal government.
- DOL regulations may exclude employers with fewer than 50 employees in circumstances to be specified
  - The new law mandates regulations by April 1.
  - The law specifically suggests an exclusion if compliance threatens business viability
- Employers of healthcare providers and first responders may exclude those employees from the new leave.

### COVERED EMPLOYERS

- Private employers with fewer than 500 employees.
- Public agency employers of any size.
- Healthcare and emergency responder employers may opt out.
- All public agencies are covered, regardless of their size.
- Every employee is eligible from his/her first day of employment.

### AMOUNT OF PAID SICK LEAVE

- Sick leave is to be paid at 100% of the employee’s regular rate for Categories 1, 2, and 3 above.
- Sick leave is to be paid at two-thirds the regular rate for Categories 4, 5, and 6 above.
- Leave is capped at 80 hours (or amount a part-time employee typically works in a two-week period).
- Pay is capped at \$511 per day or \$5,110 in the aggregate for Categories 1, 2, or 3 above.
- Pay is capped at \$200 per day or \$2,000 in the aggregate for Categories 4, 5, or 6 above.
- Pending amendment: Would provide that paid leave expires for each employee at the earlier of:
  - When an employer has paid for the maximum leave available.
  - When the employee returns to work after taking this new paid leave under this section.
  - NOTE: the language suggests the leave may not be taken intermittently, but this is not clear.

**WHEN LEAVE MAY BE TAKEN**

- Paid sick leave may be taken immediately upon the effective date of the law.
- Employees are entitled to paid sick leave up to the next scheduled shift after the leave condition ends.
- The law does not explicitly address intermittent leave, but a proposed amendment appears to preclude it.
- NOTE: Employers may not require employees to find a replacement before taking this leave.

**ENFORCEMENT**

- Employers are prohibited from retaliating against employees who use this leave.
- Violations of this act will be deemed a failure to pay the minimum wage under the Fair Labor Standard Act.

**RELATION TO FMLA EXPANSION ACT**

- Category 5 paid leave (above) is basically the same as the new childcare leave under the Emergency FMLA Expansion Act (see companion Client Alert).
  - Including the two-thirds regular rate of compensation.
- It appears employees may use Category 5 leave to cover the ten-day unpaid leave period under the FMLA.
  - This is one of the things that should be clarified in the forthcoming regulations.
- Neither law specifies how it relates to the other, but we expect the forthcoming regulations will provide clarity on this. In the meantime, it appears they will be applied together, so that an employee with who qualifies will end up receiving paid leave for the full period of available FMLA childcare leave (subject to the dollar limitations).

**TAX CREDITS FOR EMPLOYERS**

- A separate part of the Families First Coronavirus Response Act provides employers—with certain limitations—a refundable tax credit against the employer share of Social Security taxes equal to 100% of qualifying paid sick leave payments for each calendar quarter.

This Labor & Employment Alert is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact a member of [Eckert Seamans' Labor & Employment team](#), or any other attorney at Eckert Seamans with whom you have been working.