



ANALYSIS

Employee Paid Leave Rights in the Families First Coronavirus Response Act

The Families First Coronavirus Response Act (FFCRA)—signed March 18, 2020, and effective April 1, 2020—includes the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act, which directly affect employer obligations and employee rights in light of the COVID-19 pandemic. The FFCRA affects all employers with fewer than 500 employees; notably, this threshold encompasses many employers and employees who would not otherwise be entitled to leave under the (traditional) Family and Medical Leave Act. The Wage and Hour Division of the U.S. Department of Labor will administer and enforce the new law’s paid leave requirements, and the laws will continue in effect until at least December 31, 2020.

Emergency Family and Medical Leave Expansion Act

Under the Emergency Family and Medical Leave Expansion Act, employers with fewer than 500 employees must provide paid leave for qualifying events related to coronavirus as follows:

1. An employee is entitled to paid leave if the employee is unable to work because (i) the employee’s child under the age of 18 cannot return to school or his or her child care center due to the closure of the facility, or (ii) the child’s care provider is otherwise unavailable because of a public health emergency.

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2. Employees employed for 30 calendar days or more are eligible for coronavirus-related leave.
3. The first 10 days of leave may be unpaid for coronavirus qualifying issues, but an employee may elect to substitute paid time off during this 10-day period.
4. Paid leave is required for any day after the 10th day of leave. The employee must receive not less than 2/3 of his or her regular rate of pay multiplied by the employee's normal hours worked. The payment amounts are capped at \$200 per day or \$10,000 total.

Employees are entitled to 12 weeks of leave, after which they must be restored to their job. Only one exception to this job restoration requirement exists: employers with fewer than 25 employees do not need to restore the employee's job if the position no longer exists because of economic conditions caused by COVID-19. These employers must make reasonable efforts to provide the employee with an equivalent job for at least one year following the expiration of the 12-week leave period.

The Act does not address whether the employer can require certification from the employee proving their eligibility for leave. The Secretary of Labor has been directed to issue regulations related to the FFCRA, but it is currently uncertain whether the Secretary will clarify certification requirements.

Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act requires employers with fewer than 500 employees to provide paid sick leave to employees affected by the coronavirus. There is no minimum period of time that an employee must work for the employer. An employee must be unable to work for *any* of the following reasons:

1. The employee is ordered to quarantine or isolate by federal, state or local authorities;
2. The employee's health care provider instructs the employee to self-quarantine;
3. The employee has symptoms consistent with COVID-19 and is seeking a medical diagnosis;
4. The employee is caring for an individual who is subject to a federal, state or local quarantine or isolation order;
5. The employee is caring for his or her child because the child's school or child care center is closed or the child's care provider is otherwise unavailable due to COVID-19 precautions; or
6. The employee is experiencing any other similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Shook guides its clients through crisis planning and management to help navigate the risks associated with emerging issues.

To learn more about Shook's Crisis Management and Reponse capabilities, please visit shb.com or contact:



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Full-time employees are entitled to up to 80 hours of paid sick leave, whereas part-time employees are entitled to pay for the average number of hours worked over a two-week period. If leave is taken for reasons 1-3 above, pay is capped at \$511 per day or \$5,110 total. If leave is taken for any other reason, pay is capped at \$200 per day or \$2,000 total. The Secretary of Labor will create a notice in the coming days that must be posted at the employer's place of business.

Employees may take leave under the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act successively. For both laws, health care providers and emergency responders may be excluded from these rules at the discretion of the Secretary of Labor. The Secretary of Labor may also exclude employers with fewer than 50 employees, but the Secretary must determine that the rules would "jeopardize the viability of the business as a going concern."

As is the norm with the impact of COVID-19, the rules and regulations continue to evolve quickly. Of course, careful review of ongoing developments is critical in this context.

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RESOURCES

Selected Bench Guides

Georgia Pandemic Bench Guide

[Co-Authored by Shook Partner Josh Becker]

Preparing for a Pandemic: An Emergency Response Benchbook and Operational Guidebook for State Court Judges and Administrators

[National Center for State Courts]

Additional State Public Health Bench Books

[Centers for Disease Control and Prevention]

Resources for Employers

Equal Employment Opportunity Commission

[Americans with Disabilities Act; Rehabilitation Act]

Department of Labor

[Unemployment; Workplace safety]

Department of Labor Wage & Hour Division

[Families First Coronavirus Response Act]

Occupational Safety and Health Administration

[Work safety and exposure risk]

California Employment Development Department

New York Labor Department

Additional Resources

Association of Corporate Counsel COVID-19 Resource Center

Bloomberg Law Coronavirus Outbreak News

[Bain & Co. Coronavirus Economic Impact Report](#)

[Law360 Court Status and Closures List](#)

[National Center for State Courts: Court News Updates](#)

[WestLaw Global Coronavirus Toolkit](#)

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Michigan AG targets 'Coronavirus Defender Patch' in cease-and-desist letters

[Fox News - March 25, 2020] Marketers of the "Coronavirus Defender Patch," a product touted as helping to protect users from getting the virus, were sent cease-and-desist letters Tuesday by Michigan's attorney general... »

Inside A Silicon Valley Unicorn's Urgent Dash To 3D-Print Face Shields And Test Swabs To Battle COVID-19

[Forbes - March 25, 2020] Four days ago, Joe DeSimone, cofounder of 3D printing unicorn Carbon, and Ellen Kullman, who became the company's CEO last November, started thinking seriously about how the company's technology might help meet the urgent needs for medical supplies during the coronavirus pandemic... »

5 Key Things in the \$2 Trillion Coronavirus Stimulus Package

[New York Times - March 25, 2020] The largest economic stimulus measure in modern history would authorize direct payments to taxpayers and loans to small businesses, and create a \$500 billion corporate bailout fund... »

YouTube Is Lowering Default Video Quality Worldwide for 30 Days in Response to Pandemic

[Gizmodo - March 24, 2020] In response to usage changes amid the covid-19 pandemic, YouTube has announced it's reducing the default video quality on all videos globally for 30 days.... »

Traffic accidents are plummeting in several US cities

[Quartz - March 24, 2020] In the average week in San Francisco, California, since the start of 2019, there are typically about 260 calls made to 911 about traffic collisions. For the week of March 17-23, there were just 110. It was the fewest number of traffic collision calls over a seven-day period in over 17 years. Economists see this as a sure sign of a struggling economy... »

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