

The Families First Coronavirus Response Act (the “Act”) has been passed by the House and Senate and signed into law by the President on March 18, 2020 to address mandated paid emergency sick leave and paid family medical leave for workers impacted by COVID-19. Employers will receive a payroll tax credit to offset wages paid under the Act.

Emergency Paid Sick Leave: Employers with less than 500 employees are required to provide emergency paid sick leave for employees unable to work due to specific qualifying circumstances. Full-time employees are eligible for up to 80 hours of emergency paid sick leave, while part-time employees are eligible based on the number of hours they would normally work in a two-week period. This provision is applicable regardless of duration of employment and employers cannot require employees to use other sick time before the Emergency Paid Sick Leave.

Employees meeting the following qualifying circumstances are eligible for emergency paid leave equaling the lesser of their regular pay or \$511 per day with a maximum of \$5,110 per affected employee:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

Employees meeting the following qualifying circumstances are eligible for emergency paid leave equaling the lesser of two-thirds of their regular pay or \$200 per day with a maximum of \$2,000 per affected employee:

4. The employee is caring for an individual who is subject to an order as described in (1) or (2) above.
5. The employee is caring for their son or daughter if the school or place of care has been closed or the childcare provider is unavailable due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Emergency Family and Medical Leave Expansion: The Emergency Family and Medical Leave Expansion Act requires paid time off (weeks three through twelve) for any employee who has been employed for at least 30 calendar days by the employer and is unable to work (or telework) due to a need for leave to care for their son or daughter under 18 years of age if the school or daycare has been closed or the child care provider is unavailable due to a public health emergency with respect to COVID-19. The first two weeks (10 days) are unpaid under FMLA, but an employee may elect to substitute accrued vacation, personal leave, or sick leave for those days. The first 10 days may also be covered under the Emergency Paid Sick Leave for employees of companies with less than 500 employees as discussed above. The amount of paid leave available should be not less than two-thirds of an employee’s regular rate of pay, not to exceed \$200 per day and \$10,000 in the aggregate.

This provision also applies to employees of companies with less than 50 employees that are not otherwise required to offer FMLA benefits. The Secretary of Labor has the authority to issue regulations exempting businesses with fewer than 50 employees when the imposition of such requirements would jeopardize the viability of the business as a going concern. Small employers should not rely on this language or assume they will be exempt prior to guidance from the Secretary of Labor.

Telework: In both provisions, employees are encouraged to telework. If an employee can telework, they should be able to do so to reduce the need for sick leave.

Employers are prohibited from:

Requiring a worker to find a replacement to cover their hours during time off.

Discharging or discriminating against workers for requesting paid sick leave or filing a complaint against the employer.

Tax Credits: The Act provides refundable tax credits to employers equal to the required benefits for affected employees. The credit is applied against the employer's share of FICA and Medicare tax liability. If the total sick leave payments made by the employer exceed its share of FICA and Medicare taxes, the difference is refundable.

Any wages paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act are NOT subject to FICA or Medicare tax.

Self Employed Individuals: Self-Employed Individuals are allowed a tax credit against their self-employment tax if they are impacted by any of the six triggering events. However, the credit is subject to the daily limit of 67% of average daily self-employment income, or \$200. The Bill requires self-employed individuals to maintain documentation to establish self-employment eligibility as prescribed by the Secretary of the Treasury.

Effective Date: The Act will be effective no later than 15 days after the date of enactment (March 18, 2020) and will run through December 31, 2020.

The above are highlights of the newly enacted law. HTB will continue to closely monitor developments in this constantly changing situation and encourage employers to consult with your HTB advisor for assistance as needed.