

How does the Families First Coronavirus Response Act (H.R. 6201) impact employers?

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Please be aware that these recommendations are current as of the above-referenced date. This is a fluid situation. Changes in laws at the federal, state, and local level could have an impact on our recommendations going forward. Please watch for future, updated versions of this document.

Employees are the heart of the Catholic Church to spread our mission of Jesus Christ. We hold the concern of our employees at the Archdiocese of Milwaukee and at each parish and school in our thoughts and prayers.

We also realize that each parish and/or school is a separate entity and has leadership that guides and directs its mission. We respect that uniqueness and understand that each entity has to make its own decisions based upon its structure, financial obligations, and policies. We offer this information as a guide. We ask that you prayerfully make your decisions with compassion and understanding of your staff.

On March 18, 2020, The Families First Coronavirus Response Act (H.R. 6201) was signed into law. **The law is effective April 2, 2020.** This new federal law will provide paid leave to employees who miss work for certain coronavirus-related reasons. As we wait on guidance and interpretation from the Department of Labor, employers can use the following to prepare. These law changes should be promptly communicated to employees in writing in a simple format, such as question and answer.

NEW LAW No. 1 - PAID SICK LEAVE

NOTE: Even though you may have a sick leave or paid leave policy, paid sick time under this law must be made available in addition to any paid leave you already provide. Employers may not change its sick or paid leave policy to avoid the requirements of this new law.

Who is covered?

Employers with fewer than 500 employees are covered by this new law.

How much leave is required?

Covered employers must provide full-time employees with up to 80 hours of paid sick leave if the employees are unable to work (or telework) due to COVID-19. Part-time employees are entitled to paid sick leave based on the number of hours the employees work, on average, over a two-week period.

What are the qualifying reasons for leave?

Qualifying reasons for this paid sick leave include:

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.
4. The employee is caring for an individual who is subject to either number 1 or 2 above.
5. The employee is caring for his or her son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter 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 in consultation with the secretary of the treasury and the secretary of labor.

Do employees need a note from a doctor?

Although not specifically addressed in the FFCRA, we recommend that you do not require a health care provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as health care provider offices and medical facilities are very busy and will likely not be able to provide this information. The CDC recommends that people who are experiencing respiratory illness stay home until they are free of fever and other symptoms, for at least 24 hours without the use of medicines (e.g., aspirin and cough suppressants).

What are the pay requirements?

Paid sick leave must be paid at the employee's regular rate of pay, or minimum wage, whichever is greater, for leave taken for reasons 1-3 above. An Employee taking leave for reasons 4-6 may be compensated at two-thirds of his or her regular rate of pay, or minimum wage, whichever is greater.

How long do employees need to be working at my company before they get emergency paid leave?

All employees, regardless of their tenure or full- or part-time status are eligible to receive this benefit.

What if the employee has other paid leave available?

An employer may not require an employee to use other types of paid leave provided by the employer before the employee uses the paid sick time available under this law.

Do we still need to provide emergency paid sick leave if we have existing paid leave via sick days and paid time off (PTO)?

Yes. The emergency leave is in addition to any paid leave provided by employers.

What is the effective date?

The-paid-sick leave provisions take effect on April 2 and expire on December 31, 2020.

NOTE: Once the employee returns to work the employer is not required to provide any further emergency paid sick leave.

Do we need to post a notice?

Yes. Employers will be required to post an approved notice once the Department of Labor makes it available.

How does the refundable tax credit apply to tax-exempt employers?

In the past, other employer tax credit programs have been claimed as a credit against social security tax on all wages paid to employees, for tax-exempt employers. It is uncertain whether the IRS/SSA will follow suit and handle the Families First credits similarly; we anticipate we will receive additional guidance on this.

NEW LAW No. 2 - EXPANDED FMLA

NOTE: Even though an employer may not be covered under FMLA (e.g. an employer with under 50 employees), you are likely covered under this new expanded FMLA.

What is expanded?

The Emergency Family and Medical Leave Expansion Act amends the Family and Medical Leave Act (FMLA), allowing leave for eligible employees who can't work (or telework) because their minor child's school or childcare service is closed due to a COVID-19 emergency declared by a federal, state or local authority.

Who is eligible?

Eligible employees include employees who work for an employer with fewer than 500 employees and who have been on the payroll for at least 30 calendar days.

NOTE: This includes employers under 50 employees. It is possible that the Secretary of Labor will issue regulations exempting employers with less than 50 employees. Should this happen, we will issue a communication with additional guidelines.

Is this paid leave?

The first 10 days of this leave may be unpaid; however, employees may elect to substitute available paid time off, such as vacation, personal or sick leave, during this time. After the initial 10 days, employers must pay eligible employees at least two-thirds (2/3) of the employees' regular rate of pay (as defined under the Fair Labor Standards Act) based on the number of hours the employees would otherwise have been scheduled to work. These paid-family-leave benefits are capped at \$200 a day (or \$10,000 total). Leave would last a total of 12 weeks; first two weeks unpaid, remaining ten paid.

NOTE: If you have employees voluntarily or involuntarily reducing their hours (e.g. furloughed) or are temporarily separated from payroll (e.g. laid off), you would need to start counting these days as of April 2, 2020. Please note that if you have employees on a reduction in force (RIF) and/or have been terminated this requirement would not apply in order to ensure liability coverage. Before initiating a reduction in force or termination you will need to contact the Office of Parish and School Personnel.

What is the effective date?

The expanded FMLA provisions take effect on April 2, 2020, and expire on December 31, 2020.

NOTE: A small employer with fewer than 25 employees is not obligated to reinstate an employee at the end of his or her leave if the employee's position has been eliminated due to economic conditions or other changes in operating conditions of the employer caused by COVID-19, and the employer is unable to reinstate the employee to an equivalent position.

HEALTH INSURANCE

A group health plan must provide coverage without any cost-sharing requirements, such as deductibles, co-payments and co-insurance, or prior authorization or other medical management requirements, for:

- The costs of a test to detect or diagnose the virus that causes COVID-19; or
- Health care provider visits, including telehealth visits, urgent care and emergency room visits, that result in an order for or administration of a test to detect or diagnose the virus that causes COVID-19.

TAX CREDITS FOR PAID SICK LEAVE AND PAID FMLA

A payroll tax credit is created for each calendar quarter for an amount equal to 100 percent of the qualified sick leave wages and qualified family leave wages paid by an employer during the calendar quarter, including some costs associated with providing and maintaining a group health plan during such paid leaves. As of the date of this document, we do not have details as to how and when this payroll tax credit will be implemented.

NOTE: Even though an employee may be exempt from income taxation, all employers, whether for profit or non-profit are subject to payroll tax.