Families First Coronavirus Response Act (FFCRA): Employee Paid Leave Rights

The following requirements apply to employers with less than 500 employees. The Department of Labor has the authority to exempt small businesses with fewer than 50 employees from the requirements if they would jeopardize the viability of the business.

Employers will be provided tax credits for payments required under the new law. The paid sick time payroll tax credit can be claimed on a quarterly basis, equal to 100 percent of the amount of sick leave wages paid (the credits are limited to the same amounts as the benefits).

Similarly, for wages paid during a FMLA public health emergency leave, a separate payroll tax provision allows a 100 percent credit against the employer’s share of the payroll tax for each employee, limited to These credits are refundable if it exceeds the amount the employer owes in payroll tax.

The FFCRA does not provide a payroll tax cut or an extension to standard filing deadlines for federal tax returns, but these are being addressed in the CARES Act (the stimulus/relief package).

The FFCRA requires:

- Provision of up to 12 weeks of job protected leave—10 of which are paid, subject to a cap—to employees who have a “qualifying need related to a public health emergency.”
  - Can be used by an employee who is unable to work (or telework) due to a need to care for a child under 18 if the school or place of care has been closed due to a public health emergency. There is a paid leave requirement for public health emergency leave:
    - The first 10 days of public health emergency leave may be unpaid leave. The employee may elect to substitute paid leave for the public health emergency leave during this time.
    - Following the first 10 days of public health emergency leave, the employer must provide paid leave in an amount that is not less than two-thirds of the employee’s regular rate of pay, calculated based off of the number of hours the employee would otherwise be normally scheduled to work. The FMLA Expansion Act provides a calculation for employees with varying workweek schedules.
  - There is a cap of $200 per day and $10,000 in the aggregate.

- The leave may be used by any employee who has been employed for at least 30 calendar days by the employer.

- For employers with fewer than 25 employees, there is a narrow exception to the FMLA’s job reinstatement requirements.

The Emergency Paid Sick Leave Act creates a requirement to provide up to 10 days of paid sick leave at the employee’s regular rate of pay to quarantine or seek treatment related to COVID-19. The provisions limit pay to two-thirds of the employee’s regular rate of pay when the leave is to care for a family member or child. Key components follow below:
An employer must provide paid sick time for any of the following reasons
  o The employee is subject to a quarantine or isolation order related to COVID-19.
  o The employee has been advised by a health care provider to self-quarantine
  o The employee is experiencing symptoms of COVID-19 and seeking a medical
diagnosis.
  o The employee is caring for an individual who is subject to an order of
isolation/self-quarantine.
  o The employee is caring for their child if school has been closed, or the child care
provider of is unavailable.
Full-time employees must be granted 80 hours of paid sick time. Part-time employees
must be granted hours equal to the number of hours that such employee works, on
average, over a two-week period.
The rate of pay for sick time has to be the greater of the following: (1) the employee’s
regular rate of pay, (2) the minimum wage rate in effect under section 6(a)(1) of the
FLSA, and (3) the minimum wage rate for Michigan.
  o For sick time to care for a family member or child, the employee’s required
compensation only has to be two-thirds of this amount
  o There is a cap of $511 per day and $5,110 in the aggregate when the leave is for
the employee’s own need; and $200 per day and $2,000 in the aggregate when
the leave is to care for a family member
This paid sick time must be granted in addition to any pre-existing paid leave
benefits. The employer may not alter its existing paid leave policy to avoid this
provision.
The paid sick time must be made available for immediate use by an impacted employee,
regardless of the length of employment and you cannot require that any employee first
exhaust other paid leave benefits.
The paid sick leave does not carry over from one year to the next.
Employers must post a notice of the paid sick time requirements.