

# D.S. O'CONNOR & ASSOCIATES, P.C.

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## LEGAL ADVISORY

*Families First Coronavirus Response Act (FFRCA)*

**March 20, 2020**

### **Introduction**

On March 18, 2020 the Families First Coronavirus Response Act (the "FFCRA") was passed into law. The FFCRA has a number of provisions but most applicable to employers and employees are the new obligations on employers to provide certain paid and unpaid leave under the Family and Medical Leave Act ("FMLA") for what is called "public health emergency leave." There is also a requirement of mandatory paid leave through the Emergency Paid Sick Leave Act.

### **Question 1:**

**Do impacted employers receive funds for compliance with the FFCRA?**

#### Answer:

The FFCRA contains provisions that employers will receive federal tax credits related to the amount of sick leave paid to employees under this law.

### **Question 2:**

**What is the effective date of the law?**

#### Answer:

The FFCRA takes effect on April 2, 2020 and expires on December 31, 2020.

### **Emergency Family and Medical Leave Expansion Act**

### **Question 3:**

**Who is a covered employer for the purposes of the Emergency Family and Medical Leave Expansion Act?**

#### Answer:

The FFCRA amends the FMLA to provide leave for an employee who is unable to work (or work remotely) due to the need to care for the employee's minor son or daughter which school or place of care has been closed due to a public health emergency. Unlike the FMLA which

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applies to employers with 50 or more employees in a 75-mile radius, the FFCRA applies to private employers with fewer than 500 employees and public agencies.<sup>1</sup>

**Question 4:**

**In order to be eligible for public health emergency leave, how long must an employee have worked for the employer?**

Answer:

For the new public health emergency leave, employees are eligible if they have been employed by their current employer for a minimum of thirty calendar days.

**Question 5:**

**How much leave may eligible employees take under the FFCRA?**

Answer:

Eligible employees will be able to take up to 12 work weeks of “public health emergency leave” to care for their minor child if their child’s school or place of care has been closed, or their child’s child care provider is unavailable, due to a public health emergency.

**Question 6:**

**Is public health emergency leave paid or unpaid?**

Answer:

The first ten (10) days of public health emergency leave can be unpaid but employees can choose to substitute accrued vacation, sick or PTO leave for this unpaid time. Employers cannot compel an employee to use paid time during the unpaid portion of the public health emergency leave.

Under the FFCRA, if an employee continues to be eligible for and take public health emergency leave beyond the first ten-day period, covered employers are required to provide the employee with paid leave for the duration of the leave.

**Question 7:**

**What is the amount of the paid leave and is there a cap?**

Answer:

The public health emergency paid leave is an amount of pay that is not less than two-thirds of an employee’s “regular rate” of pay for “the number of hours the employee would otherwise be normally scheduled to work.” The pay amount is capped at \$200 per day and \$10,000 for the

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<sup>1</sup> Public agencies include "the government of a State or political subdivision thereof." This includes schools. FFCRA does exempt small businesses with fewer than 50 employees when the imposition of the requirements jeopardizes the viability of the business.

entire leave.

**Question 8:**

**What are the obligations under the new law to restore employees to work?**

Answer:

With some exceptions, a covered employer must restore employees who take this public health emergency leave to their previous position or an equivalent position upon their return from leave.

**Question 9:**

**Are there any exceptions to this rule?**

Answer:

Employees are entitled to reinstatement to the same position or an equivalent position, unless the employer employs fewer than 25 employees. In that case, the employer must make reasonable efforts to provide the employee with a position or an equivalent position for 1 year after the “public health emergency concludes” or 12 work weeks after commencement of the leave, whichever is earlier.

**Emergency Paid Sick Leave Act**

**Question 10:**

**What is emergency paid sick leave?**

Answer:

Covered employers are required to provide all of their employees with a new amount of paid sick leave through December 31, 2020

**Question 11:**

**Are state and local municipal employees covered under the Emergency Paid Sick Leave Act?**

Answer:

Yes. This includes school department employees. All employers with fewer than 500 employees are subject to the Act, except the Act authorizes the U.S. Department of Labor to create regulations to exempt small businesses with fewer than 50 employees when the provision of the paid leave would jeopardize the viability of the business as a going concern. These regulations have not yet been issued.

**Question 12:**

**Is there a length of service requirement for employees under the Emergency Paid Sick Leave Act?**

Answer:

No.

**Question 13:**

**What is the amount of Paid Sick Leave available under this Act?**

Answer:

Full-time employees of covered employers are entitled to up to 80 hours of emergency paid sick leave; part-time employees of covered employers are entitled to an amount of emergency paid sick leave up to the average number of hours they work over a two-week period. This paid sick time does not carry over into the year 2021.

This leave is in addition to, any other paid time off the employer already offers to employees. Employers may not require an employee to use other paid leave before they use the paid sick leave provided under the Emergency Paid Sick Leave Act.

**Question 14:**

**What are the covered reasons for qualifying leave under this Act?**

Answer:

Employers must provide each employee with paid sick time to the extent that the employee is unable to work due to a need for leave because:

1. The employee is subject to a quarantine or isolation order related to COVID-19 (coronavirus);
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 a COVID-19 quarantine or isolation order or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. The employee is caring for their own child if the school or place of care of the child has been closed or is unavailable due to COVID-19 precautions.

**Question 15:**

**What is the level of Compensation Required for Paid Sick Leave?**

Answer:

It differs depending on the need for leave. The leave is paid at the employee's regular rate of pay for reasons 1, 2 or 3 above with a cap of \$511 per day and \$5,110 in the aggregate. For leave taken for reasons, 4, 5 and 6 above the compensation is two-thirds of the employee's regular rate of pay with a cap of \$200 per day and \$2,000 in the aggregate.

**Question 16:**

**What are the notice requirements?**

**Answer:**

Covered employers will be required to post and keep posted, in conspicuous places, a notice regarding emergency paid sick leave that the Department of Labor must issue no later than March 25, 2020. The DOL is also due to issue additional guidance on the new law.