FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

EXECUTIVE SUMMARY
(Revised March 25, 2020)

In response to the coronavirus (COVID-19) pandemic, President Donald J. Trump signed the Families First Coronavirus Response Act (“FFCRA”) which expands employee benefits and protections related to COVID-19. It will create a new federal paid sick leave law, an emergency expansion of the Family and Medical Leave Act (FMLA) and expanded unemployment insurance provisions.

**EFFECTIVE DATE:** The FFCRA will take effect on April 1, 2020, and will remain in effect until December 31, 2020. It covers leave taken on or after April 1, 2020.

**COVERED EMPLOYERS:** Applies to all employers with fewer than 500 employees – this is based on how many full-time and part-time employees within the United States the employer has at the time the employee takes leave; this includes temporary employees and any regular employees who are out on leave at the time. *There are no CBA waivers available.*

**NOTICE POSTING:** Employers must post an EPSL/EFMLA notice for employees. A poster is available from the U.S. Department of Labor (DOL) through the Posters section of the Wage & Hour Division on the DOL website.

**ENFORCEMENT:** The government will not engage in enforcement through April 17, 2020 for employers making a good faith effort to fulfill these obligations. See the DOL’s Field Assistance Bulletin of March 24, 2020 for details.

1. **Emergency Paid Sick Leave (EPSL) Act**

**Coverage and Eligibility:** Employers with fewer than 500 employees will be required to provide full-time employees with an additional 80 hours of paid sick leave (PSL). An employer may not require an employee to use any other available paid leave before the employee has exhausted the 80 hours. Part-time employees will receive PSL based on the hours worked during an average two-week period. For part-time employees with varying schedules, employers should base their calculation on the average hours the employee was scheduled per day over a six-month period. If the employee has not worked for six months, the employer should calculate based on a reasonable expectation of the average hours the employee will be scheduled to work. If an employer has 500 or more employees, then they are not covered by the EPSL Act.
**Immediate Employee Eligibility:** EPSL does not accrue over time. Rather, it is available on April 1, regardless of how long an employee has been employed. EPSL is in addition to any existing PSL already provided by the employer.

**Reasons for Leave:** Employers must provide EPSL whenever an employee is unable to work because the employee is:

1. Subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. Advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. Caring for an individual who is subject to a government quarantine or a self-quarantine as advised by a health care provider (reasons 1 and 2 above);
5. Caring for their child if the child’s school or place of care has been closed, or the child-care provider is unavailable due to COVID-19 precautions; or
6. Experiencing any other “substantially similar condition” specified by the Secretary of Health and Human Services.

**Emergency Paid Sick Leave Rate of Pay:** Employees must be paid at their regular hourly pay rate, including the taxable vacation fringe benefit amount (but no other fringe benefits) if on leave for reasons 1 - 3, capped at $511 per day for up to a total cap of $5,110. If on leave for reasons 4 - 6, they must be paid, at minimum, two-thirds of their regular rate, including vacation fringe amount, directly to the employee capped at $200 per day for a total cap of $2,000.

**Tax Credits:** The FFCRA provides quarterly tax credits for employers. The credits are taken against the employers’ portion of Social Security taxes. Employers may take a credit of up to $511 per day, or $200 per day if the employee will be caring for a family member. These credits are per employee who is provided with EPSL. For more information regarding how to claim your available tax credits ASAP, please read this article for guidance.

### 2. Emergency Family & Medical Leave Expansion Act (EFMLA)

**Coverage and Eligibility:** The threshold number of employees for FMLA coverage is expanded for this particular situation. All employers with fewer than 500 employees (not 50 or more as with normal FMLA) are covered. Employee eligibility requirements are loosened as well. Instead of having to have worked 1,250 hours in the preceding 12 months, EFMLA applies to any employee who has been employed for at least 30 days and who is on leave for specified reasons related to COVID-19. *If an employer has 500 or more employees, then they are not covered by EFMLA.*

**Reason for EFMLA Leave:** An employee may take EFMLA leave only when they are unable to work because they must care for the employee’s child who is under the age of 18 years, if the child’s school or place of care has been closed or the child’s care provider is unavailable due to an emergency related to COVID-19. Note that this leave is independent of EPSL.

**EFMLA Leave is Paid Leave:** The first 10 days of the new EFMLA leave is unpaid. Employees may substitute vacation, personal leave or paid sick leave during this time. After the first 10 days, an employer
must pay full-time employees at a rate of no less than two-thirds of their regular rate of pay for their normally scheduled hours. Part-time employees are entitled to an amount based on the average number of hours they worked over a six-month period. Employees within their first six months are entitled to paid time based on a reasonable expectation of the average hours the employee is expected or scheduled to work. Paid EFMLA leave under the new law is capped at $200 per day and $10,000 total per employee.

- **Collective Bargaining Unit Employees** – EFMLA leave can be paid through trust fund contributions, but the feasibility is still being reviewed and discussed with each union and trust. Absent any different directives, the rate of pay would be two-thirds of an employee’s regular hourly pay rate, including the taxable vacation fringe benefit amount, capped at $200 per day with a total cap of $10,000, paid directly to the employee, plus the flat monthly FMLA H & W contribution to the applicable trust as set by that trust. We will update this guide when/if there is a change to this.

**Small Business Exemption:** The Secretary of Labor is authorized to exempt small businesses with fewer than 50 employees from its requirements if the viability of their business is in jeopardy. The authorization process is still in development.

**Right to Reinstatement:** EFMLA remains protected leave. An employee must be returned to the same, or an equivalent position. Employers with less than 25 employees are exempt if the position no longer exists due to economic conditions or other changes in operating conditions caused by the COVID-19 emergency. Exempt employers must make reasonable efforts to contact the employee if an equivalent position opens within a year.

**Tax Credits:** Similar to EPSL, employers will be provided with quarterly tax credits against the employers’ portion of Social Security taxes. Employers are entitled to take a credit up to $200 per day per employee and $10,000 per employee. For more information regarding how to claim your available tax credits ASAP, please read [this article](#) for guidance.

### 3. Unemployment Insurance

The FFCRA provides $1 billion for emergency grants to states for activities related to processing unemployment insurance benefits. Half of the money will be used for staffing, technology and other administrative costs. The other half will be used for states that experience at least a 10% increase in unemployment.

**FFCRA Q & A** are available on the U.S. Department of Labor (DOL) website.

**Sources:** Sweeney Mason; Fisher Phillips; Littler; DOL