

Legislative Update: Families First Coronavirus Response Act & New York COVID-19 Leave

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Please consult your own legal and tax advisors to determine how these laws affect you.

Families First Coronavirus Response Act

As of April 10, 2020

Enacted Federal Law

Summary

- The law allows free COVID-19 testing, establishes paid and unpaid leave programs, provides grants to states for unemployment benefits, expands food service initiatives, and increases federal Medicaid funding.
- The term used in the law is “COVID-19”

Status of Legislation / Timing

- March 14, 2020: Initial legislation passed in the U.S. House of Representatives
- March 16, 2020: Amended legislation passed in the U.S. House of Representatives
- March 18, 2020: Amended legislation passed by the Senate and enacted by the President
- Law will become effective April 1, 2020 per DOL guidance
- Law will sunset on 12/31/20

U.S. Department of Labor Guidance – First Round

Summary

- The DOL guidance – provided in a Fact Sheet for Employees, a Fact Sheet for Employers and a Questions and Answers document – addresses critical questions, such as how an employer must count the number of their employees to determine coverage; how small businesses can obtain an exemption; how to count hours for part-time employees; and how to calculate the wages employees are entitled to under this law.
- The DOL and IRS issued and revised guidance in late March/early April
- DOL issued emergency regulations on April 1, 2020

Highlights of Guidance

- A covered employer must provide to employees that it has employed for at least 30 days up to an additional 10 weeks of expanded family and medical leave at two-thirds the employee's regular rate of pay
- The expanded family and medical leave provisions of the FFCRA **apply to certain public employers**, and private employers with fewer than 500 employees. Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.
- Small businesses with fewer than 50 employees **may qualify for exemption** from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

Emergency Paid Sick Leave Act



Who is eligible?

Employees of private employers who have fewer than 500 employees*

What are the qualifying events?

Employee cannot work or telework because:

- Employee has been “advised” by a health care provider to self-quarantine due to concerns related to COVID-19 (Own Health Condition)
- Employee is subject to a federal, state, or local quarantine or isolation order regarding COVID-19 (Own Health Condition)
- Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis (Own Health Condition)
- Employee is caring for “an individual” subject to the first 2 qualifying events (Care for another)
- Employee is caring for a minor child if school or place of care has closed or the childcare provider is unavailable due to COVID-19 precautions (Care for another)
- Employee is “experiencing any other substantially similar condition” specified by the HHS in consultation with the DOT and DOL (Own Health Condition)

*Refer to prior page for additional guidance

Emergency Paid Sick Leave

	Qualifying Event	Paid Duration	Pay	Benefit Maximum / Day	Total Maximum Benefits	Tax Credit? Y/N	Tax Credit* Maximum / Day
1	Employee is unable to work (or telework) and has been “advised” by a health care provider to self-quarantine due to concerns related to COVID-19	80 hours for F/T EE ⁺	Up to 100% Pay	Up to \$511		Y	\$511
2	Employee is unable to work (or telework) and is subject to a federal, state, or local quarantine or isolation order regarding COVID-19	80 hours for F/T EE ⁺	Up to 100% Pay	Up to \$511	Up to \$5,110 combined	Y	\$511
3	Employee is unable to work (or telework) and is experiencing symptoms of COVID-19 and seeking a medical diagnosis	80 hours for F/T EE ⁺	Up to 100% Pay	Up to \$511		Y	\$511
4	Employee is unable to work (or telework) because the employee is caring for “an individual” subject to the first 2 qualifying events	80 hours for F/T EE ⁺	Up to 2/3 Pay	Up to \$200		Y	\$200
5	Employee is unable to work (or telework) to care for a minor child if school or place of care has closed or the childcare provider is unavailable due to COVID-19 precautions	80 hours for F/T EE ⁺	Up to 2/3 Pay	Up to \$200	Up to \$2,000 combined	Y	\$200
6	Employee is experiencing any other substantially similar condition” specified by the HHS in consultation with the DOT and DOL	80 hours for F/T EE ⁺	Up to 2/3 Pay	Up to \$200		Y	\$200

* An employer can apply for this Tax Credit through their payroll tax reporting

+ Part Time Employees will have less time available based on the average number of hours the Employee works over a two-week period

Emergency FML Expansion Act



Who is eligible?

- Employees of private employers who have fewer than 500 employees
- Employees of certain public employers



What are the qualifying events?

- Employee is unable to work (or telework) to care for a minor child if school or place of care has closed or the childcare provider is unavailable, due to a public health emergency regarding COVID-19



What key provisions were removed from prior bill?

- Self-isolation due to exposure or exhibiting symptom of coronavirus
- To care for a family member due to that family member's exposure to coronavirus or showing symptoms of coronavirus

Emergency FML Expansion

Qualifying Event	Paid Elimination Period	Paid Duration	Pay	Benefit Maximum / Day	Total Maximum Benefits	Tax Credit? Y/N	Tax Credit Maximum / Day
Employee is unable to work (or telework) to care for a minor child if school or place of care has closed or the childcare provider is unavailable, due to a public health emergency regarding COVID-19	10 Days (Unpaid)	Appx. 10 weeks	Up to 2/3 Pay	Up to \$200	Up to \$10,000	Y	\$200

* An employer can apply for this Tax Credit through their payroll tax reporting

NY Sick Leave & DBL/PFL Expansion

As of April 10, 2020

Enacted NY Sick Leave and DBL/PFL Expansion Law

Summary

- The NY Sick leave & DBL/PFL expansion law provides sick leave or wage replacement benefits to employees who are under a mandatory or precautionary order of quarantine or isolation issued by the State or New York, the department of health, local board of health or any governmental entity duly authorized to issue such an order due to COVID-19
- For PFL, the Workers' Compensation Board amended the definition of "serious health condition" to include a family member who is diagnosed with COVID-19

Status of Legislation / Timing

- March 18, 2020: Legislation was signed by Governor Cuomo
- Law is effective immediately (March 18, 2020)
- March 30, 2020: Workers' Compensation Board issued emergency regulation amending definition of "serious health condition"

Benefit Eligibility by Size

Employees

NY Leave and Benefit Requirements

100 or more employees

- Employers must provide paid sick leave to their employees for the full duration of the quarantine period

11-99 employees

- Employers must provide paid sick leave to their employees for the first five days of the quarantine at 100% of their pay
- PFL/DBL Insured: After the fifth day of leave, employees are eligible for DBL and PFL benefits until the end of the quarantine period. During the PFL/DBL benefit period, employers must provide unpaid sick leave to employees.

10 or fewer employees, with employer net income of more than \$1 million

- Employers must provide paid sick leave to their employees for the first five days of the quarantine at 100% of their pay.
- PFL/DBL Insured: After the fifth day of leave, employees are eligible for DBL and PFL benefits until the end of the quarantine period. During the PFL/DBL benefit period, employers must provide unpaid sick leave to employees.

10 or fewer employees with employer net income of up to \$1 million

- PFL/DBL Insured: Employees are eligible for DBL and PFL benefits during the entire quarantine period. During this time period, employers must provide unpaid sick leave to employees.

NY Sick Leave

Qualifying Event:

The NY COVID-19 law only pertains to a period of mandatory or precautionary quarantine or isolation.

Qualifying Event	ER Size	Duration	Benefit Amount	Benefit Maximum	Benefit Payer
Inability of an employee to perform regular duties of employment, when work from home is not available, due to mandatory or precautionary quarantine or isolation due to COVID-19	<100 ¹	5 days	100% Pay	None	ER
To provide care for minor dependent child of the employee who is subject to the mandatory or precautionary order of quarantine or isolation.	<100 ¹	N/A	N/A	N/A	
Inability of an employee to perform regular duties of employment, when work from home is not available, due to mandatory or precautionary quarantine or isolation due to COVID-19	100+ Lives or Public Employer	14 days ²	100% Pay	None	ER
To provide care for minor dependent child of the employee who is subject to the mandatory or precautionary order of quarantine or isolation.	100+ Lives or Public Employer	N/A	N/A	N/A	

¹ Employers with 0-10 employees and up to \$1M in net income in 2019 are required to provide unpaid, job protected sick leave and the DBL/PFL benefit will pay during the full quarantine period.

² Duration dependent on the quarantine period with an estimated minimum of 14 days.

NY DBL/PFL Expansion

Qualifying Event:

The NY COVID-19 law only pertains to a period of mandatory or precautionary quarantine or isolation and does not impact COVID-19 diagnosed DBL claims after the quarantine period where those claims would revert back to the existing DBL/PFL qualification and benefit amounts.

Qualifying Event	ER Size	Duration	Benefit Amount	DBL Max Benefit / Week	PFL Max Benefit / Week	Total Maximum Weekly Insured Benefits	Benefit Payer
Inability of an employee to perform regular duties of employment, when work from home is not available, due to mandatory or precautionary quarantine or isolation due to COVID-19	<100 ¹	5 days ¹	Up to 100% Pay for DBL	\$2,043.92	\$840.70	\$2,884.62	DBL/PFL Provider
To provide care for minor dependent child of the employee who is subject to the mandatory or precautionary order of quarantine or isolation.	<100 ¹	14 days ²	Up to 60% Pay for PFL	N/A	\$840.70	\$840.70	
Inability of an employee to perform regular duties of employment, when work from home is not available, due to mandatory or precautionary quarantine or isolation due to COVID-19	100+ Lives or Public Employer	N/A	N/A	N/A	N/A	N/A	N/A
To provide care for minor dependent child of the employee who is subject to the mandatory or precautionary order of quarantine or isolation.	100+ Lives or Public Employer	N/A	N/A	N/A	N/A	N/A	N/A

¹ Employers with 0-10 employees and up to \$1M in net income in 2019 are required to provide unpaid, job protected sick leave and the DBL/PFL benefit will pay during the full quarantine period. Duration for all others dependent on the length of the quarantine period. Assuming a 14-day quarantine and that the employee works five days per week, the benefits will be paid during a five day period. Per NY guidance, the payments to employees should represent the amount of money the employee would have otherwise received for the five or 14 day period, so the duration may be more or less than five days depending on the employee's schedule.

² Duration dependent on the quarantine period with an estimated minimum of 14 days.



<https://www.metlife.com/covid-19-update-ceo-faq/>

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