



Federal Emergency Paid Sick Leave Act

Syracuse ♦ Ithaca ♦ New York City

March 2020

On Wednesday, March 18, 2020, President Trump signed the Families First Coronavirus Response Act (the "FFCRA"), effective April 1 through December 31, 2020. The FFCRA seeks to assist employees impacted by COVID-19 and applies to employers with less than 500 employees and any covered public agencies. This summary is focused on the Emergency Paid Sick Leave Act (the "Act") portion of the FFCRA.

Under the Act, an employer must provide an employee paid sick time to the extent they are unable to work or telework due to a need for leave for any of the following reasons:

1. the employee is subject to a Federal, State or local quarantine or isolation order ("Quarantine 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 subject to a Quarantine Order;
5. the employee is caring for a child if the school or childcare has closed, or childcare provider is unavailable, due to COVID-19 precautions; or
6. the employee is experiencing any other substantially similar conditions specified by the secretary of the Department of Health and Human Services.

Duration of Paid Sick Time:

- **Full-time eligible employees** are entitled to two weeks (80 hours) of paid sick time.
- **Part-time eligible employees** are entitled for leave for the number of hours they are normally scheduled to work over a 2-week period.

Payment Amounts for Paid Sick Time:

- Employees eligible based on their own medical condition related to COVID-19 (items 1-3 above) will receive the higher of the employee's regular rate of pay or the applicable minimum wage, not to exceed \$511 per day or \$5110 total.
- Employees eligible based on caretaking for another or based on any similar medical condition (items 4-6 above) will receive two-thirds their regular rate of pay or two-thirds the applicable minimum wage, not to exceed \$200 per day or \$2,000 total.

Use of Paid Sick Time:

- Employees are immediately eligible for paid sick time, regardless of how long the employee has been employed by an employer.
- Employees may first use the paid sick time under this law, and an employer may not require an employee to first use other paid leave provided by the employer.

No Discrimination:

Employers may not discharge, discipline, or discriminate against employees who take leave pursuant to the law and have filed a complaint or started or testified in a proceeding under the law.

Notice Requirements:

Employers covered by the FFCRA are required to post notice leave provisions in a conspicuous place. A model notice issued by the Department of Labor can be found here:

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf.

The notice may be emailed or mailed to employees or posted on an employee information internal or external website.

Continued on next page



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Federal and State Law:

As we outlined in our recent alert <https://bhlawpllc.com/publication/new-york-state-paid-sick-leave-and-covid-19/>, New York's Paid Sick Leave law is intended to supplement the federal law. Below is a brief summary of how the two laws compare and work together:

- New York law requires a government Quarantine Order for employees to be eligible for paid sick leave. Federal law will significantly expand employee eligibility, as outlined above.
- New York law provides eligible employees of employers with 10 or less employees and net income of less than \$1 million with unpaid leave. Federal law expands paid sick leave to provide eligible employees with **80 hours of paid sick leave**.
- New York law provides employers with 10 or less employees and a net income of greater than \$1 million and employers with 11-99 employees with 5 days of paid sick leave. Federal law expands paid sick leave to provide eligible employees with **80 hours of paid sick leave**.
- Employers with 100 or more employees and public employers of any size remain eligible for the New York law's **14 days of paid sick leave**, 4 days more than the 80 hours provided by the federal law.
- Unlike federal law, New York does not provide a maximum dollar amount of paid sick leave, so if someone is entitled to leave under both statutes, they will get their full pay under the New York law.
- Unlike the New York law, federal law does not provide an exception for employees who have traveled to high-risk areas, and thus does still apply to those travelers.
- Federal law permits an employer of an employee who is a health care provider or an emergency responder to exclude this employee from paid sick time. New York does not provide this exception.
- Under federal law, 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.

This alert contains a summary of key issues related to paid sick leave, however, there are a host of issues raised by the FFCRA and the Act. The FFCRA also creates the Emergency Family Medical Leave Act, and this will be addressed in a separate alert by our firm. We recommend that you contact counsel to determine how this law and other related laws apply to your particular situation.

If we can provide you with additional insight and information regarding changing employment laws related to the current coronavirus pandemic and how to address internal issues at your business, please contact :



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Bousquet Holstein PLLC provides representation to employers, large and small, and to employees. Our attorneys make it a priority to become familiar with our clients' businesses. We emphasize addressing employment, discrimination, and labor issues before they become problems and we advise our clients in all areas of human relations and human resource practices to satisfy our clients' business objectives.

Our attorneys are also fully versed in the complex set of rules that regulate the employee benefits area as set forth under ERISA (Employee Retirement Income Security Act of 1974, as amended) and the Internal Revenue Code. We routinely advise clients with regard to the design, implementation, and administration of employee retirement, welfare, and fringe benefit plans.



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