

# Unpacking Congress's COVID-19 Bill

Families First Coronavirus Response Act

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# Hello!

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Hi!

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# Opening Thoughts

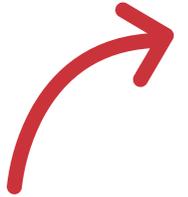
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- Preparing to **adapt** to the new reality
- Building employee trust through valuing their safety
- Employees are looking to their company for guidance
- What we do now will impact our ability to recruit and retain in the future

# Agenda

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- Overview
- Resources
- Questions?



Chat with our  
team and others  
in your position

# Overview of New Legislation

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- Families First Coronavirus Response Act signed into law on March 18, 2020
- Key provisions
  - Coverage mandates for coronavirus testing and services
  - Paid emergency leave for those who are infected or caring for a family member with the illness
  - Additional Medicaid funding, food assistance and unemployment benefits
  - Effective April 2 – 15 days after enactment; expires December 31, 2020

# Health Plan Impact: Coronavirus Testing & Services

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- The Act **requires** group health plans and health insurance issuers (self-funded AND fully-insured plans) to cover **with no employee cost share or prior authorization:**
  - FDA-approved COVID-19 testing
  - Provider office visits where the patient is tested or evaluated for the virus
  - Telehealth visits with testing or evaluation for the virus
  - ER visits with testing or evaluation for the virus

*\*Applies to all group health plans, including plans sponsored by public, private, and nonprofit employers, religious institutions, or governmental entities*

# FMLA Impact: Emergency Expansion

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- **Covered Employers:** Employers with fewer than 500 employees are covered
- **Covered Employees:** Any employee who has been employed for at least 30 calendar days
- **Duration:** Up to 12 weeks of job-protected leave

# FMLA Impact: Emergency Expansion

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- Exemptions:
  - Certain health care workers and emergency responders
  - Small businesses with fewer than 50 employees, if leave "would jeopardize the viability of the business"
    - Not clearly defined as of today

# FMLA Impact: Emergency Expansion

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- What if I'm not a covered employer?
  - We still recommend reviewing your leave and sick pay policies and consider offering similar leave to the federal law (or more generous if you are able)

# How is FMLA expanded?

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- The Act adds "public health emergency leave" to the list of qualifying leaves under the FMLA
- An employee will qualify for public health emergency leave if the employee is unable to work (or telecommute) because the employee must care for the employee's child due to a school or daycare closing
  - Applies to children under age 18
  - A school includes an elementary or secondary school; postsecondary schools are not included

# How is FMLA expanded?

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- Compensation:
  - No pay for first 10 days of leave (employee can, but is not required, to use any other leave available to them, including the emergency sick leave discussed later)
    - Employers may not require employees to use paid leave during this period
  - After 10 days, employers must pay two thirds of the employee's regular rate of pay for the number of hours they would normally be scheduled to work, capped at \$200/day and \$10,000 total

# Reinstatement after FMLA

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- The same reinstatement provisions apply as apply under the traditional FMLA. However, restoration to position does not apply to employers with fewer than 25 employees if certain conditions are met:
  - The job no longer exists because of changes affecting employment caused by an economic downturn or other operating conditions that affect employment caused by a public health emergency, subject to the following conditions:
    - The employer makes reasonable efforts to return the employee to an equivalent position, and
    - The employer makes efforts to contact a displaced employee if anything comes up within a year of when they would have returned to work.

## What the Act Doesn't Say....

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- Intermittent leave is not addressed; assume permitted in accordance with existing rules
- Documentation will be required for a school or daycare closing isn't defined – likely only basic evidence (such as email or news report) will be required
- What about time taken off prior to the enactment emergency provisions? Unanswered, but experts who have weighed in believe prior leave will be disregarded

# Emergency Paid Sick Leave

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- **Covered Employers:** Private employers with fewer than 500 employees; almost all public employers
  - DOL can exclude certain health care workers and emergency responders, or small businesses with fewer than 50 employees if viability of business jeopardized
- **Covered Employees:** All employees (no matter how long they have been employed)

# Emergency Paid Sick Leave

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Employee qualifies if:

- Quarantined or isolated subject to federal, state, or local quarantine/isolation order;
- Advised by a health care provider to self-quarantine;
- If experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- When caring for an individual doing #1 or #2 (2/3 pay);
- When caring for a child whose school or daycare is closed due to COVID-19 (2/3 pay); or
- When the employee is experiencing any other substantially similar condition (2/3 pay)

# Emergency Paid Sick Leave

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## Duration of Leave:

- Full time employees absent due to their own circumstances are entitled to 80 hours of paid sick leave at full pay, capped at \$500 per day, \$5,110 in total
  - Reduced to 2/3 pay, capped at \$200/day and \$2,000 for caregiver leave
- Part-time employees are entitled to sick leave equal to the amount of hours worked on average over a typical two-week period

# Emergency Paid Sick Leave

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## **Interaction with Other Employer-Provided Paid Sick Leave and other Paid Leave:**

- Does not pre-empt existing state and local paid sick leave requirements
- Employers cannot require employees to use other leave first
- Sick leave provided for under the law does not carry over from year to year, and the requirements expire December 31, 2020
- Need not be paid upon termination

# FMLA and Sick Leave: Notice and Policy Requirements

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- Employers must update FMLA policies to include temporary provisions for public health emergency leave
- Employers newly subject to FMLA because of emergency provisions must adopt written policies
- Paid sick leave notice requirements:
  - Employers must post a model notice to be provided by the DOL

## Paying for Paid Sick Leave/FMLA: Tax Credit Assistance

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- To defray costs, covered private employers will be able to take a tax credit against the employer portion of social security taxes (6.2%) or hospital insurance tax paid on employee wages each calendar quarter (ending Q4 2020)
- Gig workers and other self-employed workers would be eligible for a tax credit to cover the benefits

# Calculating the Credit

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- The credit may consist of amounts equal to:
  - Emergency sick leave wages paid by the employer in the quarter
    - Capped at \$511 per day for full pay; \$200 per day for 2/3 pay
  - Paid leave provided under emergency FMLA provisions
    - Capped at \$200 per day with an aggregate cap of \$10,000 per quarter
  - Any qualifying health plan expenses related to the paid leave
- The credit cannot exceed the social security tax liability imposed on the employer for a quarter, but excess can be treated like an overpayment that will be refunded
- Maximum days for which credit may be taken is 10 days more than was taken in per quarter

# Other Clarifications for Employers

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- Employers can require an employee to stay out of the workplace for an appropriate period of time due to symptoms, exposure or contracting the virus.
  - Must maintain confidentiality per ADA
- Employers can take employee temperatures per new EEOC guidance.
  - The temperature reading should be kept confidential and the person administering the temperature check should be trained on the procedure

## Other Clarifications for Employers

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- An employer may take an applicant's temperature as part of a post-offer, pre-employment medical examination
- An employer may screen applicants for symptoms of COVID-19 after making a conditional job offer
- An employer may delay the start date of an applicant who has COVID-19 or symptoms associated with it
- An employer may withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it

# COVID-19 Hotline

855-978-6677

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