

## **BRSW Summary: Families First Coronavirus Response Act**

**As of March 24, 2020**

This is a new law, and we are not certain this is how it will be interpreted and applied by the IRS, DOL and various state unemployment divisions. The guidance is changing on a daily basis. This is intended to provide guidance and should not be relied upon as authoritative as it may be out of date in a few days.

Each business must consider its own unique circumstances before it makes a decision.

The President signed the legislation on the evening of March 18, which means the provisions go into effect no later than April 2. On March 20, 2020, the IRS announced employers can start taking the credits created by the act. It appears while the provisions must start by April 2, employers can choose to implement early.

There are two provisions providing paid leave to employees forced to miss work due to COVID-19:

1. Emergency Family and Medical Leave Expansion Act
2. Emergency Paid Sick Leave Act

### **Who is subject?**

- All employers with fewer than 500 employees are subject to these acts.
- There is a hardship exemption for employers with fewer than 50 employees (the DOL has yet to give guidance for this exemption).
- Also, certain healthcare providers and emergency responders may be exempt.
- For profit and not for profits are subject to these acts.
- Local, state and federal government employees are also covered.

### **Emergency Paid Sick Leave Act**

- **Reasons for Paid Sick Leave** – An eligible employee is allowed to take paid sick leave because the employee is:
  - Subject to federal, state or local quarantine related to COVID-19 (Ohio, Indiana, Michigan and Illinois all have shelter in place directives in place),
    - *The shelter in place order applies to non-essential businesses. Essential businesses are still open and therefore employees of essential businesses must qualify under a different reason.*
    - *Businesses should also consider whether part of the operation is essential, and part is non-essential.*

- *Some businesses were forced to close and only perform emergency procedures. Therefore, part of the business was deemed non-essential and part was essential.*
    - Advised by a health care provider to self-quarantine due to COVID-19 concerns,
    - Experiencing COVID-19 symptoms and seeking medical diagnosis,
    - Caring for an individual subject to a federal, state or local quarantine, or self-quarantine, or
    - Caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to the public health emergency.
- **How many hours?** Employers with fewer than 500 employees (unless they qualify for an exemption) must pay 80 hours of paid sick leave at the employee's regular rate of pay, unless caring for another individual which is at two thirds regular rate of pay.
- **Part time employees are eligible** – part time employees are eligible to fully paid time off for the typical number of hours that they work in a typical two-week period and two thirds rate of pay for caring for another individual.
- **Cap on dollars paid** - Paid sick wages are limited to \$511 per day and up to \$5,110 total per employee for their own use or \$200 per day and up to \$2,000 total to care for others.
- **100% refundable to the employer** – 100% of the qualified sick leave wages are refundable to the employer against the employer portion of Social Security taxes within three months.
- **Tax treatment:** Paid sick wages will not be considered wages for the employer or the employee for purposes of FICA.
- **Self-employed options?** There are some provisions to allow for self employed individuals to also claim a tax credit, depending on the circumstances, as set forth by the IRS.

### Emergency Family and Medical Leave Expansion Act

- **Reasons for Emergency Leave** – Any individual employed by the employer (full time and part time) for at least 30 days (before first day of leave) may take up to 12 weeks of job-protected leave to allow an employee, who is unable to work or telework, to care for the employee's child (under age 18) if the child's school or place of care is closed or the childcare provider is unavailable due to the public health emergency.
- **Paid Leave** – The first two weeks are not paid; the remaining 10 weeks are paid at two thirds the employee's regular rate.
- **Cap of dollars paid** – The pay is limited to \$200 per day and \$10,000 in the aggregate per employee.
- **100% refundable to the employer** – 100% of the qualified sick leave wages are refundable to the employer against the employer portion of Social Security taxes within three months.
- **Tax treatment:** Paid family leave wages will not be considered wages for the employer or the employee for purposes of FICA.
- **Self-employed options?** There are some provisions to allow for self-employed individuals to also claim a tax credit, depending on the circumstances as set forth by the IRS.

## Issues with Unemployment

This law takes effect no later than April 2. At that time, it does not appear that an employer would be able to do mass layoffs due to the COVID-19 and instruct those affected to apply for unemployment but would first look to see if the employees qualify for sick time and/or emergency family and medical leave and pay the employees using those mechanisms and then be reimbursed by the IRS for that cost. Unless the employer can qualify for the hardship exemption under the yet to be determined DOL guidance, these acts apply to them if they have under 500 employees.

If an employer has already laid off employees and the employees have applied for unemployment, then the employer would have to rehire those staff in order to take advantage of these provisions.

### Helpful Links:

IRS announcement for tax credits for sick and paid time off:

<https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>

DOL Employer Requirements:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

Here is a CISA List of Essential Businesses:

[https://mcusercontent.com/8742670cd14b12b934002a2a5/files/35523e17-9d8c-4e6d-9b06-fa2fcc868ac3/CISA\\_Guidance\\_on\\_Essential\\_Critical\\_Infrastructure\\_Workers\\_1\\_20\\_508c.pdf](https://mcusercontent.com/8742670cd14b12b934002a2a5/files/35523e17-9d8c-4e6d-9b06-fa2fcc868ac3/CISA_Guidance_on_Essential_Critical_Infrastructure_Workers_1_20_508c.pdf)

Please reference the website for Ohio's unemployment and the COVID-19 issues at:

<http://jfs.ohio.gov/ouio/CoronavirusAndUI.stm>

Please call 866-733-0025, option #2 if the employer is considering a mass layoff.