

MISTY H. GUTIERREZ

T F THOMAS, FELDMAN & WILSHUSEN, L.L.P.
& W ATTORNEYS AND COUNSELORS

**Mandatory Paid Sick Leave and FMLA Expansion:
How New Legislation Impacts the Construction
Industry**

March 31, 2020

**12222 MERIT DR, SUITE 1450
DALLAS, TX 75251
214.369.3008**

MGUTIERREZ@TFANDW.COM

2 Key Issues

- ❖ Mandatory Paid Sick Leave
- ❖ Limited Expansion of FMLA

Effective Date

April 1, 2020

Until

December 31, 2020

Who Must Comply?

Employers with fewer
than 500 employees

When is Paid Sick Leave Required?

Primary Category	Secondary Category
<ul style="list-style-type: none">❖ Employee under federal, state or local quarantine or isolation order❖ Employee told to self-quarantine❖ Employee experiencing symptoms of COVID-19	<ul style="list-style-type: none">❖ Employee caring for someone under quarantine or isolation order❖ Employee caring for child whose school or daycare is closed❖ Employee experiencing a “substantially similar condition” to COVID-19*

Pay Rates for Paid Sick Leave

Primary Category	Secondary Category
<ul style="list-style-type: none">❖ The employee's regular rate of pay, capped at \$511 per day and \$5110 total per employee❖ No less than the applicable minimum wage	<ul style="list-style-type: none">❖ 2/3 the employee's regular rate of pay, capped at \$200 per day and \$2000 per employee

How Many Hours of Paid Sick Leave?

- ❖ 80 hours for full-time employees
- ❖ Average of 2 weeks for part-time
 - ❖ Based on 6-months' data
- ❖ In addition to paid sick leave you already provide or that is required by local law

Who Gets Paid Sick Leave?

- ❖ All current employees
- ❖ No waiting period

Who Must Comply with FMLA Expansion?

Employers with fewer than 500
employees

What is the Scope of the FMLA Expansion?

- ❖ It applies to an employee who cannot work in order to care for a child under 18 years of age because school or daycare is closed due to a public health emergency.
- ❖ “Child” = any child you have legal responsibility for or adult children with disabilities.

Who Can Receive FMLA Leave?

- ❖ An employee who has worked for you for at least 30 days; OR
- ❖ An employee who was laid off before March 1, 2020, who has been rehired, and who worked 30 of the 60 calendar days preceding the employee's lay off date

How Much Paid FMLA Leave?

- ❖ No FMLA paid leave 1st 10 days
 - ❖ Can use paid sick leave or other PTO
- ❖ After 10 days:
 - ❖ 2/3 of regular rate up to \$200/day
 - ❖ Up to a total of 12 weeks
 - ❖ \$10K cap
- ❖ Other FMLA regulations apply

What Happens When Leave Ends?

- ❖ Must be restored to prior position

Unless:

- ❖ Fewer than 25 employees, **and**
- ❖ Position no longer exists due to changed operating conditions to public health crisis, **and**
- ❖ Employer makes reasonable efforts to restore employee to equivalent position for up to one year

Who Can Get an Exemption?

Paid Sick Leave or FMLA:

- ❖ Fewer than 50 employees, **AND** an officer of the business determines:
 - ❖ Leave payments would result in financial obligations exceeding revenues and cause business to cease operating;
 - ❖ Absence of employee(s) requesting leave would entail substantial risk to the financial health or operational capabilities due to the employee's specialized skill, knowledge of the business or responsibilities; or
 - ❖ Insufficient number of workers able, willing, and qualified to work when needed for the business to operate at a minimal capacity.

Additional Requirements

- ❖ Cannot require employee to find shift coverage to use leave
- ❖ Must post notice of rights
 - ❖ Email, mail, or notice on website appropriate if employees remote or teleworking



FAMILIES FIRST CORONAVIRUS RESPONSE ACT: EMPLOYEE PAID LEAVE RIGHTS

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date through December 31, 2020.

Generally, the Act provides that employees of covered employers are eligible for:

- *Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay* where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and
- *Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay* where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Covered Employers: The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees.^[1] 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.

Eligible Employees: All employees of covered employers are eligible for two weeks of paid sick time for specified reasons related to COVID-19. Employees employed for at least 30 days are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19. ^[2]

Notice: Where leave is foreseeable, an employee should provide notice of leave to the employer as is practicable. After the first workday of paid sick time, an employer may require employees to follow reasonable notice procedures in order to continue receiving paid sick time.

► Qualifying Reasons for Leave

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

^[1] Certain provisions may not apply to certain employers with fewer than 50 employees. See Department FFCRA regulations (expected April 2020).

^[2] Under the Act, special rules apply for Health Care Providers and Emergency Responders.

► DURATION OF LEAVE

For reasons (1)-(4) and (6): A full-time employee is eligible for 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

For reason (5): A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical leave) at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

► CALCULATION OF PAY ^[3]

For leave reasons (1), (2), or (3): employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

For leave reasons (4) or (6): employees taking leave are entitled to pay at ¾ their regular rate or ¾ the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

For leave reason (5): employees taking leave are entitled to pay at ¾ their regular rate or ¾ the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period). ^[4]

► RESOURCES

For additional information or to file a complaint:

1-866-487-9243 | TTY: 1-877-889-5627

[dol.gov/agencies/whd](https://www.dol.gov/agencies/whd)

No Retaliation

- ❖ Cannot terminate, discipline, or discriminate against an employee who uses paid sick leave or files a complaint
- ❖ Consequence = FLSA violation
 - ❖ Fines, lost wages, liquidated damages
 - ❖ Criminal penalties also possible

Dallas Paid Sick Leave

Revoked and deemed unenforceable

The Good News

Payroll Tax Credits

- ❖ Up to 100% tax credit for qualified sick leave and FMLA leave
- ❖ No credits for other leave

The Good News

Paycheck Protection Program

- ❖ Federally backed loans to cover payroll paid sick leave, insurance premiums, rent, utilities, and mortgage payments.
- ❖ Generally, available to employers with fewer than 500 employees
- ❖ If you retain your full staff and payroll, all of your eligible expenses for up to eight weeks will be 100% forgiven.
- ❖ Loan must be processed by June 30

The Good News

Federal Contractors

May be reimbursed any paid leave they provides to to keep its employees and subcontractors "in a ready state" if they are subject to a shut down.

Resources:

DOL Fact Sheets, Q&As, and Mandatory Poster:

<https://www.dol.gov/agencies/whd/pandemic>

CDC Guidance for businesses:

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

Small Business Loan Information:

<https://www.coronavirus.gov/smallbusiness/>

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