



BASSFORD REMELE

LEGAL UPDATE

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**Information on Pending Federal Legislation Related to COVID-19:
Family and Medical Leave and Sick Leave**

By: [Jonathan P. Norrie](#), [Daniel R. Olson](#) and [Uzodima Franklin Aba-Onu](#)

On Friday, March 13, 2020, the United States House of Representatives passed the “Families First Coronavirus Response Act.” The bill has not yet been passed by the Senate or signed into law by the President. However, employers may wish to take these potential requirements into consideration as they develop policies and procedures regarding COVID-19.

I. AMENDMENTS TO THE FAMILY AND MEDICAL LEAVE ACT

Covered Employer: An employer with fewer than 500 employees. The Department of Labor can issue regulations to exempt employers with fewer than 50 employees for reasons of financial hardship.

Covered Employee: Any employee that has been on the employer’s payroll for 30 days. The Department of Labor can issue regulations to exclude some health care providers from eligibility.

Amount of Leave: Up to 12 weeks.

Reasons for Leave: A covered employee can take leave:

- (i) To comply with recommendation or order of public health official due to exposure to or symptoms of coronavirus.

- (ii) To care for a family member whose presence in the community would jeopardize the health of other individuals because of the exposure of such family member to coronavirus or exhibition of symptoms of coronavirus by such family member.
- (iii) To care for a child of an employee if the child's school or place of care has been closed, or the childcare provider is unavailable, due to coronavirus.

Compensation During Leave: The first 14 days of leave may be unpaid, but an employee can choose to substitute accrued vacation leave, personal leave, or other medical or sick leave during the leave. The employer cannot force an employee to use their accrued paid leave.

After 14 days of unpaid leave, employers must pay FMLA leave at no less than two-thirds the employee's regular rate of pay for the number of hours the employee would have been normally scheduled.

Restoration Rights: Employer must return to same or similar position upon end of leave. Employers with fewer than 25 employees may be exempt if position needs to be eliminated due to economic downturn from COVID19, subject to some conditions.

Tax Credits for Employer: Employers get a tax credit for 100% of qualified family leave wages required to be paid, up to \$200/day, against the employer's portion of Social Security taxes. If that total credit amount exceeds the employer's total Social Security tax liability, the difference is paid to the employer as a refund.

II. EMERGENCY PAID SICK LEAVE ACT

Covered Employer: An employer with fewer than 500 employees.

Covered Employee: Any employee.

Amount of Leave: Up to 2 weeks.

Reasons for Leave: A covered employee can take leave to:

- Self-isolate because the employee is diagnosed with COVID-19
- Obtain a medical diagnosis or care if the employee is experiencing the symptoms of COVID-19
- Comply with a public official or a health care provider order or recommendation that the physical presence of the employee on the job would jeopardize the health of others
- Care for the employee's family member who is self-isolating because the family member has been diagnosed with or is experiencing symptoms of COVID-19 and/or needs to obtain medical diagnosis or care
- Care for the child of such employee if the school or child care has been closed due to COVID-19

Compensation During Leave: Full-time employees are paid at their regular rate of pay. However, when the employee is absent to care for a family member, leave is paid at two-thirds the employee's regular rate. Part-time employees are paid the number of hours that the employee works, on average, over a 2-week period.

Existing Paid Leave Policy: Any paid leave provided before the law is enacted cannot be credited against the employee's paid leave entitlement. However, hours cannot be carried over after December 31, 2020.

Tax Credits for Employer: Employers get a tax credit for 100% of leave wages required to be paid, up to \$511/day, against the employer's portion of Social Security taxes. If that total credit amount exceeds the employer's total Social Security tax liability, the difference is paid to the employer as a refund.

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