

## Overview

On March 18, 2020, the US federal government enacted legislation in response to the COVID-19 pandemic, the Families First Coronavirus Response Act (Pub. L. No. 116-127, “Phase II”), providing coronavirus-related leave for employees of companies with less than 500 people and related employer tax credits. It also provides over \$1 billion to state and local agencies to combat the coronavirus, assures no copayments for COVID-19 testing, and assists the funding of state unemployment trusts.

## Family Medical Leave Expansion

Certain employers (having 50 or more employees) are required to provide paid leave for each day of leave that an eligible employee takes as a result of an emergency with respect to COVID-19 declared by a Federal, States or local authority because the eligible employee is unable to work (or telework) due to a need for leave to care of a child. An eligible employee is an employee who has been employed for at least 30 calendar days.

Employers must provide paid leave (after an initial 10-day period) at an amount not less than two-thirds of the employee’s regular rate of pay capped at \$200 per day and \$10,000 in the aggregate. Employee’s positions are protected for 1-year subject to exclusions for companies with fewer than 25 employees.

The Secretary of Labor may exclude certain health care providers and emergency responders and exempt businesses with fewer than 50 employees when the imposition of such leave requirements would jeopardize the viability of the business as a going concern.

Tax credits are granted mirroring the amount paid by Companies because of these requirements.

## Paid Sick Leave Expansion

Requiring employers (with fewer than 500 employees) to provide up to 80 hours of paid sick time (prorated for part-time employees) to the extent that an employee is unable to work (or telework) because: (i) a quarantine or isolation order related to COVID–19; (ii) self-quarantine due to concerns related to COVID–19; (iii) experiencing symptoms of COVID–19 and seeking a medical diagnosis; (iv) caring for someone who is quarantined or isolated; (v) caring for a child if the school or place of care of the child has been closed, or the child care provider is unavailable, due to COVID–19 precautions; or (vi) employee is experiencing any other substantially similar condition. Leave is capped at \$511 per day and \$5,110 aggregate for subsections (i)-(iii) and at \$200 per day and \$2,000 in the aggregate for (iv)-(vi).<sup>1</sup>

Health care providers may choose to exclude employees from this section and companies with fewer than 50 employees may be excluded for hardship. Tax credits are granted mirroring the amount paid by Companies because of these requirements.

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<sup>1</sup> See Phase II Act at Sec. 5110(5)(A)(ii).

For additional insights related to business and legal implications as a result of COVID-19, please visit our [Knowledge Center](#).

#### Milbank LLP COVID-19 Task Force

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