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## **SUMMARY OF THE CORE POINTS OF THE EMERGENCY FAMILY & MEDICAL LEAVE EXPANSION ACT & THE EMERGENCY PAID SICK LEAVE ACT**

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On March 18, 2020, President Trump signed into law a new Act, the **Families First Coronavirus Response Act**. The purpose of the Act is to serve as a response to the evolving COVID-19 Pandemic, and it specifically includes provisions that provide paid sick leave for eligible employees, as well as free coronavirus testing, expanded food assistance and unemployment benefits and requires employers to provide additional protections for health care workers. *This brief summary summarizes only the core points of two specific provisions contained in the Act, both that relate to paid leave to employees who are unable to work because of the COVID-19 Pandemic, specifically: (I) the Emergency Family & Medical Leave Expansion Act, and (II) the new Emergency Paid Sick Leave Act. This brief summary is NOT intended to service as legal advice and all public libraries should consult with their own legal counsel regarding any necessary updates or amendments to their employment policies and practices.*

### **I. EMERGENCY FAMILY & MEDICAL LEAVE EXPANSION ACT**

#### **PUBLIC HEALTH EMERGENCY LEAVE—EFFECTIVE DATE**

The Emergency Family & Medical Leave Expansion Act (“Emergency FMLA”), which temporarily expands the FMLA by adding a new “Public Health Emergency Leave” section at the end of the FMLA, takes effect 15 days after its date of enactment on March 18, 2020, or on April 2, 2020, and ends on December 31, 2020.

#### **ELIGIBLE EMPLOYEES**

The Emergency FMLA expands FMLA’s definition of “eligible employee” to now include any employee who has been employed for at **least 30 calendar days** by an employer. “Employer” was also expanded from “50 or more employees” to employers with “fewer than 500 employees.”

#### **EXCLUDED EMPLOYEES & EMPLOYERS**

The Emergency FMLA excludes health care providers and emergency responders from the definition of eligible employees who are allowed to take leave under this Act, and further allows the Secretary of the Department of Labor to exempt small business employers with fewer than 50 employees if imposing the leave requirements would jeopardize the viability of that small business.

#### **ENTITLEMENT TO EMERGENCY LEAVE**

The Emergency FMLA expands entitlement to leave under FMLA to include “a qualifying need related to a public health emergency” which, with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the elementary or

secondary school, or place of care has been closed, or the child care provider of such son or daughter who receives compensation for providing child care services on a regular basis is unavailable, due to an emergency with respect to COVID-19 declared by a Federal, State, or local authority. Thus, employees who have been employed for at least 30 calendar days prior to the first day of leave by an employer with fewer than 500 employees may take up to 12 weeks of job-protected emergency leave.

**INITIAL LEAVE PERIOD & CALCULATION OF PAID LEAVE**

The Emergency FMLA also reduced the initial leave period from the first 14 days to the first 10 days. The initial leave period may consist of unpaid leave, and an employee may elect to use any accrued vacation, personal, or sick leave during the initial leave period. After an employee has taken his or her initial 10-day leave period, the Act requires an employer to provide the employee paid leave calculated based on an amount that is not less than 2/3 of an employee’s regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work, but caps such paid leave for each employee at \$200 per day and \$10,000 in the aggregate.

For employees whose work hours vary from week to week to such an extent that the employer is unable to determine with certainty the number of hours the employee would have worked, paid leave shall be calculated based on the average number of hours such employee worked during the six (6) months before taking such leave, or, for employees who have worked less than 6 months, the “reasonable expectation of the employee” of the average number of hours per day the employee would normally have been scheduled to work.

**II. EMERGENCY PAID SICK LEAVE ACT**

**EFFECTIVE DATE**

The new Emergency Paid Sick Leave Act takes effect 15 days after its date of enactment on March 18, 2020, or on April 2, 2020, and expires on December 31, 2020.

**ELIGIBILITY & ENTITLEMENT TO PAID SICK LEAVE**

This Act provides for the first time a federally mandated paid sick leave benefit program. It allows eligible employees to receive paid sick leave due to any of the specific following qualifying reasons related to COVID-19:

- (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and seeking medical diagnosis.
- (4) The employee is caring for *an individual* (which includes a non-family individual) subject to a federal, state or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

- (5) The employee is caring for the employee's son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable due to COVID-19 precautions.
- (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

**AMOUNT OF PAID SICK LEAVE**

Under the Act, employers with fewer than 500 employees must provide their full-time employees with 80 hours of paid sick leave at the employee's regular rate of pay. Part-time employees are entitled to be paid the number of hours equal to the number of hours that such part-time employee works, on average, over a 2-week period. An employer may elect to exclude health care or emergency responder employees. The Act caps paid sick leave for an employee to \$511 per day or up to a total of \$5,110 if leave is taken for the employee's own use, and up to a total of \$2,000 if leave is taken to care for other individuals.

**USE OF PAID SICK TIME**

An employer is required to make paid sick time available for an employee's immediate use, regardless of how long the employee has been employed by the employer.

**PROHIBITIONS**

An employer may not require an employee to use other paid leave provided by the employer before the employee uses the paid sick time mandated under this Act. Nor may an employer require the employee to find a replacement employee to cover the hours during which the employee is using paid sick time. It is unlawful for any employer to discharge, discipline, or in any other manner retaliate or discriminate against any employee who takes leave as provided in this Act and has filed any complaint or instituted or caused to be instituted any proceeding under this Act or who is about to testify in any such proceeding.

**TERMINATION OF PAID SICK LEAVE & CARRYOVER**

Paid sick leave ceases beginning with the employee's next scheduled work shift immediately following the termination of the need for paid sick time under the Act. Paid sick time under the Act cannot be carried over from 1 year to the next.

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