

The following has been prepared for the general information of our clients. It is not meant to provide legal advice with respect to any specific matter and should not be acted upon without professional counsel. If you have any questions or require any further information regarding these or other related matters, please contact our office.

COVID-19 SICK LEAVE FMLA AND UNEMPLOYMENT

The President has signed into law HR 6201—FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA or Act). Because of the negotiations between the House and Senate, many provisions of earlier bills have been eliminated.

The US Department of Labor has issued a Fact Sheet for employers found [here](#):

Here is an analysis of current provisions:

Division C: FMLA Expansions

- FMLA provisions apply after 30 days (Employers over 50)
- Leave for people (parents) caring for children under 18 when school has been closed or child care provider is unavailable due to this public health emergency.
- First 10 days of leave is unpaid—unless employee can access sick/vacation time/personal leave.
- After 10 days, employer provides paid leave for each day of leave taken.
- Paid leave is calculated as not less than 2/3's of an employee's regular rate of pay
- BUT NOTE—"In no event shall such paid leave exceed \$200 per day and \$10,000 in the aggregate." Div. C, HR 6201-page 14.
- Part time employees are calculated on the "average number of hours" per day over a "6-month period"
- Normally, FMLA leave is 12 weeks unpaid. 29 CFR 825.100
- A FMLA leave or leave request does not protect an employee from a Bonafede lack of work/lack of funds layoff.

Division D: Emergency Unemployment Insurance Stabilization and Access Act of 2020

- Employers are required to notify employees of unemployment—Unemployment may be payable for partial layoffs or reduced hours based on EDD Guidelines/Calculations
- May be non-chargeable to employer accounts.
- Normal requirements for unemployment will be waived.
- Provides \$1B in 2020 for emergency grants to states for activities related to processing/paying unemployment claims once a threshold of 10% additional unemployment occurs
- Unemployment is based on ratios of benefit vs. wages at layoff (including partial layoffs). Expect EDD Rules to change in favor of employees.

Division E: Emergency Paid Sick Leave Act of 2020

- Requires all employers to provide sick leave for employees if unable to work or telework because of quarantine, self-quarantine, experiencing symptoms, caring for an individual subject to

quarantine/order of quarantine etc., employee who cares for children because of school closure, place of care closure, or the child care provider is unavailable. **THE WAGE AND HOUR DIVISION OF THE US DEPARTMENT OF LABOR EXPLAINS THIS PHRASE TO MEAN-**

- (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.
- ***IMPORTANTLY--Health order closures don't qualify as isolation/quarantine for the sick leave provisions***
 - Full time employees are entitled to 80 hours
 - Part time employees are entitled to a number of hours equal to the number of hour on average of a 2 week period. (if the employee works 10 hours one week and 20 hours the next, 30/2 or 15 hours of sick time.
 - Paid sick time will not carry over from year one.
 - This leave may be used first, then other leaves such as vacation. An employer cannot force the employer to take other leaves then available to the employee. This means for full time employee 80 hours of leave, then their regular accrued leaves such as sick, vacation etc.
 - The use of this sick leave is specific to COVID-19. If the need for such sick time no longer exists, the requirement to pay the leave stops.
 - An employer cannot ask the sick employee to find a replacement worker, or ask/force the employee to use other paid leave banks first. This is called sequencing. 80 hours of new sick leave, then other leave banks.
 - A notice of sick leave shall be posted for employees where notices are normally kept.
 - IMPORTANT: Sick leave under this Act can be enforced as unpaid wages which include substantial penalties.
 - An employer does not have to pay the employee for unused sick time in the event of a separation (lay off) from employment.