

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (“FFCRA”)

	Family Leave Emergency Pay (Amendments to FMLA)	Emergency Sick Pay (in addition to FMLA)
To Whom It Applies	<p>Employers with less than 500 employees and public sector employers</p> <p>The Secretary of Labor will be permitted when writing regulations to exempt certain healthcare providers for good cause shown and to exempt businesses with less than 50 employees when the requests of FFCRA would jeopardize the viability of the business as a going concern.</p>	<p>Employers with less than 500 employees and public sector employers</p> <p>Additionally, individuals acting directly in the interest of an employer in relation to the employee can be considered an employer.</p> <p>Like the FMLA amendments, the Secretary of Labor will be permitted when writing regulations to exempt certain healthcare providers for good cause shown and to exempt business with less than 50 employees when the requests of FFCRA would jeopardize the viability of the business as a going concern.</p>
Eligible Employee	Employee will mean any individual who has been employed for at least 30 calendar days by the employer from whom leave is requested.	Employee is any individual employed by the employer. This is the FLSA definition of employee.
Qualifying Events	<p>Amends Section 102(a)(1), 29 U.S.C. §2612(a)(1), to add an additional Section that permits employees to take leave when an emergency with respect to COVID-19 is declared by a Federal, state or local authority and</p> <p>(1) an employee is unable to work or telework due to a need to care for his/her son or daughter under the age of 18 if the student’s school or place of care has been closed; or (2) if the childcare provider of the son or daughter is unavailable, due to the public healthcare emergency.</p>	<ol style="list-style-type: none"> (1) 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 healthcare provider to self-quarantine due to concerns related to COVID-19; (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis; (4) The employee is caring for an individual who is subject to an order set forth in (1) or (2) above; (5) The conditions of the Family Leave Emergency Pay Amendment provisions are met; or (6) Employee is experiencing any other substantially similar condition specified by the Secretary of the Health and Human Services in consultation with the Secretary of the Treasury and Secretary of Labor.

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (“FFCRA”)

	Family Leave Emergency Pay (Amendments to FMLA)	Emergency Sick Pay (in addition to FMLA)
Leave Required and Pay	<p>(1) Unpaid leave for the first 10 days in which employee takes the leave. However, if an employee has any form of paid leave with the employer (vacation, sick leave, PTO, etc.) the employee may elect to substitute the paid leave during the first 10 days.</p> <p>(2) After ten days the leave becomes paid leave.</p> <ul style="list-style-type: none"> > The pay cannot be less than 2/3 of the employees’ regular hourly rate of pay as defined by the FLSA. > Based on the number of hours the employee would normally be scheduled to work or if employee works a variable schedule from week to week and employer cannot determine with certainty the number of hours the employee would work then you pay based on the average scheduled hours per day over the previous six months. If employee has worked less than six months and works a variable schedule, the “reasonable expectation” of what employee would work on average per day at the time hiring. > In no event will the paid leave exceed \$200 per day and \$10,000 in the aggregate. This would equate to 10 work weeks at 40 hours a week for a total of 50 days. 	<ul style="list-style-type: none"> > Full time employees will receive 80 hours of pay. Part-time employees will receive pay for the number of hours equal to number of hours the employee works on average over a two-week period. > There is no carryover from year to year of the sick leave. > An employer may not require employee to use other paid time off before he/she uses the emergency sick leave and it cannot require an employee to find a replacement or cover employee while he/she is out on leave. > The rate of pay for employees is up to \$511 per day and an aggregate of \$5,110 for qualifying events (1), (2), or (3) above. > 2/3 of employee’s regular rate of pay but no more than \$200 per day and \$2,000 in the aggregate for qualifying events (4), (5), and (6) above.
When the Requirement to Pay Leave Begins	Not later than 15 days from March 18, 2020 and ending on December 31, 2020.	Not later than 15 days after March 18, 2020 and expiring on December 31, 2020.

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (“FFCRA”)

	Family Leave Emergency Pay (Amendments to FMLA)	Emergency Sick Pay (in addition to FMLA)
Restoration to Position	Just like normal FMLA an employee, at the end of leave, must be returned to the same or an equivalent position unless (1) employer has less than 25 employees and (2) the position employee held when leave commenced no longer exists due to economic conditions or other changes in the operating conditions of employer that affect employment due to the public health emergency during the leave if the employer has made reasonable efforts to restore the employee to an equivalent position (pay, benefits, and other terms of employment) that employee held. If reasonable efforts fail, the employee is placed on a recall list that lasts for 12 months from the earliest to occur of (1) the date the public health emergency concludes or (2) the date 12 weeks after the date the employee’s leave commences.	No specific requirement, but note that it will be a prohibited act to discharge or discipline an employee who (1) takes leave under the Act <u>and</u> (2) has filed any complaint or instituted any proceeding under or related to the Act or who has testified or is about to testify in any such proceeding.
Employees Requirement to Notify Employer of Need for Leave	Must provide the employer with notice of the leave as is practicable.	Not specified, however, after the first workday (or portion thereof) for which employee receives paid sick leave, the employer may require employee to follow reasonable notice procedures to continue to receive pay.
Notice Posting Requirements	Not specifically addressed but presumably there will be an amended FMLA poster and DOL leave forms.	No later than seven days after the date of enactment, the Secretary of Labor shall make publicly available a model notice for posting while the employer will post in conspicuous places where employer customarily posts notices.
Enforcement Mechanism	Not clear, presumably those set forth in the FMLA, however, an employer that has less than 50 employees cannot be sued by an employee(s) for violating the Act. Presumably the DOL can bring enforcement however.	<ul style="list-style-type: none"> > Violation of the Act will be considered a violation of the FLSA and will subject employer who violates the Act to the failure to pay the value of pay that should have been received and liquidated damages, attorney’s fees, etc. > In case of unlawful termination lost wages, attorneys fees, etc.

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (“FFCRA”)

	Family Leave Emergency Pay (Amendments to FMLA)	Emergency Sick Pay (in addition to FMLA)
Taxes	<ul style="list-style-type: none"> > Wages paid under the Act are not subject to employer social security tax. > There will be a tax credit available to employer based on 100% of the wages paid under the Act. 	<ul style="list-style-type: none"> > Wages paid under the Act are not subject to employer social security tax. > There will be a tax credit available to employer based on 100% of the wages paid under the Act.

The following attorneys may be contacted to help answer any questions:



David C. Burton
Labor, Employment & Immigration
757.473.5354
dburton@williamsmullen.com



Brydon M. DeWitt
Employee Benefits & Executive Compensation
804.420.6917
bdewitt@williamsmullen.com



Laura D. Windsor
Labor, Employment & Immigration
804.420.6466
lwindsor@williamsmullen.com



Marc Purintun
Employee Benefits & Executive Compensation
804.420.6310
mpurintun@williamsmullen.com



Michael C. Lord
Labor, Employment & Immigration
919.981.4093
mlord@williamsmullen.com