

## Families First Coronavirus Response Act Summary of Provisions

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The Families First Coronavirus Response Act (H.R. 6201) was passed rapidly by the House and Senate, and signed into law by President Trump on March 18, 2020. The Act contains an unprecedented response by the federal government to the national health emergency by mandating paid sick time and paid family medical leave to employees impacted by COVID-19. Employers with fewer than 500 employees will have to take immediate action to prepare to comply with the new law which goes into effect on April 1, 2020.

The Act has several components, including: (a) paid family and medical leave (PFML), (b) paid sick time (PST), (c) tax credits for PFML and PST, (d) unemployment insurance, (e) medical plan components and (f) several immediate public health related matters. This article addresses the first two components.

The PFML and PST mandates apply only to private employers with fewer than 500 employees and sunset on December 31, 2020. Tax credits are immediately available to offset costs for covered employers.

### EMERGENCY PAID SICK TIME

#### Covered Employers

The PST provisions apply to private employers that have fewer than 500 employees. There is a potential regulatory exemption for small companies with fewer than 50 employees.

#### Covered Employees

An employee is eligible for PST if they are unable to work or telework because of any of the following conditions:

1. The employee is subject to a governmental quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and is seeking a diagnosis.
4. The employee is caring for an *individual* subject to a governmental quarantine or isolation order. or health care provider recommendation. The cared for individual need not be a family member.
5. The employee is caring for an eligible "son or daughter" under age 18 if school or place of care has been closed due to COVID-19 precautions.
6. The employee is experiencing any other "substantially similar condition" specified by the Secretary of Health and Human Services.

#### PST Use and Amount

Covered full-time employees are entitled to 80 hours of paid leave. If the leave is for child care that



qualifies for emergency paid family leave they could be entitled to additional paid leave. Part-time employees are entitled to a prorated amount based on the average number of hours the employee works during a two-week period.

Leave is paid based on the employee's regular rate of pay, depending on the reason for leave. Leave is paid at 100% of the employee's regular rate and capped at \$511 per day and \$5,110 in the aggregate for an employee who is:

- Quarantined under a government order or advice of health care provider, or
- Experiencing COVID-19 symptoms and seeking a medical diagnosis.

Leave is paid at two-thirds of the employee's regular rate of pay and capped at \$200 per day and \$2,000 in the aggregate (exclusive of any additional emergency paid family leave) for leave needed:

- To care for another individual under quarantine
- To care for a child under 18 whose school or child care provider is closed or unavailable because of COVID-19, or
- If the employee is experiencing a substantially similar condition.

### **Other PST Considerations**

- Unlike the PFML discussed below, employees are immediately eligible to use paid sick time
- Employers cannot require use of company provided paid time off before an employee uses PST under the Act
- Unused PST does not carry-over at year's end
- Unused PST is not paid out upon employee's termination or separation
- Employers cannot require employees to find replacement workers
- Employers are obligated to post the [model notice](#) with other mandatory notices. It's recommended that the notice be posted on the company's intranet for access by teleworkers
- Retaliation against employees who use emergency paid sick leave or complain about violations of the Act is prohibited
- There is no collective bargaining agreement (CBA) exemption

### **PAID FAMILY MEDICAL LEAVE (PFML)**

The PFML provisions expand the FMLA by adding a new qualifying absence to the FMLA due to a "public health emergency leave." Unlike FMLA which is all unpaid, PFML has an unpaid and paid portion.

### **Covered Employers**

While the Family Medical Leave Act (FMLA) generally only applies to employers with 50 or more employees, the Act expands the definition of employer for purposes of public health emergency



leave to include all private employers with fewer than 500 employees. However, the Secretary of Labor is authorized to exempt employers with fewer than 50 employees from providing public health emergency leave if compliance would jeopardize the ability of the company to stay in business.

### **Covered Employees**

Unlike the hours of service eligibility requirements under the standard FMLA, the Act expands public health emergency coverage to include employees who have been employed by the employer for at least 30 days.

### **PFML Use and Amount**

An employee is eligible for PFML if they cannot work or telework due to the need to care for a son or daughter under 18 years of age if, because of a public health emergency regarding COVID-19, the child's school or place of care has been closed, or a child care provider is unavailable.

If an employee qualifies for PFML, the first ten days of leave is unpaid. An employee may elect to use accrued paid leave during that time period and can use PST under the Act during this ten-day period.

After ten days, an employee can receive up to ten weeks of pay at a rate not less than two-thirds of the employee's regular rate of pay based on the employee's regular schedule. For each employee, paid leave is capped at \$200 per day and \$10,000 total (or \$12,000 including \$2,000 of PST).

### **Other PST Considerations**

- The employee must provide notice of foreseeable leave as soon as practicable
- There is no collective bargaining agreement (CBA) exemption, but there are special rules under multi-employer bargaining agreements
- There is no private right of action for damages or attorneys' fees available against employers that do not meet the definition of covered employer under the FMLA
- While the Act is silent on whether intermittent leave is permitted, DOL FAQ's say that intermittent leave is permitted if, and in increments, agreed upon by the employer.

Quarterly tax credits are available to offset employer payments (See separate article on [Tax Credits](#))

Employers that violate the PFML provisions are subject to the FMLA's enforcement provisions. However, DOL has indicated that it will observe a temporary 30-day enforcement grace period if the employer acted reasonably and in good faith to comply with the Act.

Western Growers is working with Congressional allies and others to help secure relief for seasonal agricultural employers who will be adversely impacted by these provisions.

### **Additional Resources:**

[Families First Coronavirus Response Act: Questions and Answers](#)

[DOL Wage & Hour Division: COVID-19 Resources](#)

