

# Department of Labor Issues Interim Guidance on Recently-Enacted Coronavirus Response Act

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Earlier today, the United States Department of Labor issued its [first guidance on the implementation of the recently-enacted Families First Coronavirus Response Act](#). The DOL is expected to issue formal implementation regulations later this week. Some of the important information in this initial compliance assistance document is highlighted below:

- **Act goes into effect on April 1, 2020**—applies only to

leave taken between April 1<sup>st</sup> and December 31st

- Act applies to all businesses that **employ fewer than 500 full-time and part-time employees** within the United States at the time leave will be taken
  - Employees on leave, temporary employees, jointly-employed employees (regardless of whose payroll they are on—FLSA joint-employer test), and day laborers count toward employee count.
  - Independent contractors not counted as employees
  - FMLA integrated-employer test to determine whether two or more entities are separate employers
- Small businesses who are concerned that providing paid leave will jeopardize the viability of their business should document why the business meets the DOL criteria for an exemption (criteria will be detailed in upcoming regulations)
- Regular rate of pay for purposes of the Act is the average of the employee's regular rate over the six months prior to date leave is taken (including commissions, tips, and piece rates)
- When employees would normally have been scheduled to work more than 40 hours a week, the eFMLA requires that normal overtime hours be included, however the premium for overtime hours need not be paid. However, Emergency Paid Sick Leave only requires payment of up to 80 hours of sick leave over a 2-week period.
- **Emergency paid sick leave—Employee** (paid at the greater of the employee's regular rate of pay, the federal minimum wage, or applicable State or local minimum wage, subject to cap of \$511 per day/\$5,110 total) may be taken if an employee is unable to work or telework because the employee:
  - is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
  - has been advised by a health care provider to self-quarantine due to concerns related to

COVID-19; or

- is experiencing symptoms of COVID-19 and are seeking medical diagnosis
- **Emergency paid sick leave—Caring for Family Member** (paid at 2/3 of the greater of the employee's regular rate of pay, the federal minimum wage, or applicable State or local minimum wage, subject to cap of \$200 per day/\$2000 total) may be taken if an employee is unable to work or telework because the employee is:
  - caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
  - caring for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or
  - experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services
- **Emergency Family and Medical Leave—School Closing/Childcare** (paid at 2/3 of the greater of the employee's regular rate of pay, the federal minimum wage, or applicable State or local minimum wage, subject to cap of \$200 per day/\$12,000 total for twelve weeks, when combined with paid sick leave) may be taken if an employee is unable to work or telework because the employee is unable to work or telework because they need to care for their child(ren) whose school or childcare is closed/unavailable due to COVID-19.
  - First 10 days of eFMLA is unpaid, or an employee may substitute any accrued vacation leave, personal leave, or medical/sick leave

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