The Families First Coronavirus Response Act was signed into law on March 18, 2020. This has been a bit of a moving target since the House of Representatives first passed House Bill 2601. However, it appears we have some clarity at this point. The bill initially started out creating a new paid leave program funded by the federal government and paid through the Social Security Administration. Based on shifting ideas of how to get money in the hands of affected workers that entire idea was shelved.

There are many provisions in the Act that relate to federal programs not of direct interest to our clients and those changes will not be discussed here. We will focus on summarizing the provisions we think our clients will be most directly affected by here.

**EXPANSIONS TO THE FAMILY AND MEDICAL LEAVE ACT**

The Emergency Family and Medical Leave Expansion Act amends the Family and Medical Leave Act (“FMLA”) by providing a new qualifying need related to public health emergency leave.

Covered employers (private employers with fewer than 500 employees) must allow eligible employees (those who have been employed for at least 30 calendar days by the employer) to take up to 12 weeks of FMLA leave for a qualifying need related to a public health emergency including:

- To care for the employee’s child under 18 years of age, if the child’s school or care provider is closed or unavailable due to a public health emergency.

The Secretary of Labor may exclude certain health care providers and emergency responders from coverage, as well as certain small businesses with fewer than 50 employees if imposing such requirements would jeopardize the viability of the business as a going concern. We won’t know exactly how this exemption works until the Secretary of Labor releases guidance. The Secretary of Labor is expected to issue this guidance within 15 days.

The first 10 days for which an employee takes leave can be unpaid, but employees can elect to use other paid benefits to cover it (including paid sick leave). After the first 10 days, employers must provide paid leave at two-thirds (2/3) of an employee’s regular rate. In no event shall such paid leave exceed $200 per day and $10,000 in the aggregate.

If an employer is signatory to a multiemployer collective bargaining agreement, it may fulfill its obligations under this section by making contributions to a multiemployer fund, plan, or program based on the paid leave each of its employees is entitled to, provided that the fund, plan, or program
enables employees to secure pay based on hours they have worked. The short-term disability benefits offered through many of our clients’ welfare plans could possibly be used to meet this exception. However, benefit levels of those plans might have to be increased to meet the minimums established in the Act. If you are interested in exploring compliance via this route, please let us know.

The Act also has a job restoration provision. It requires that an employee on leave be allowed to return to their previous position after leave is done. For employers with less than 25 employees, they do not have to hold an employee’s job open if they can show that position was eliminated due to economic duress cause by a health emergency.

**Key Takeaway:** The earlier versions of the bill had a very expansive definition of what circumstances would qualify an employee for paid FMLA leave. Basically, all quarantines, whether self-imposed or ordered by a doctor or public official would have triggered paid leave. The final bill only qualifies an employee for paid FMLA leave to take care of a child under age 18 who’s school or day care closed.

**EMERGENCY UNEMPLOYMENT INSURANCE STABILIZATION AND ACCESS**

Under this Act, employers are required to notify employees of the availability of unemployment compensation at the time of separation from employment. The notification can be based on model notification language issued by the Secretary of Labor.

States ensure that applications for unemployment compensation and assistance are accessible in at least two ways (in-person, phone, online). States are also required to notify applicants when an application is received and being processed and if the application cannot be processed, provide information to the applicant about how to ensure successful processing.

The emergency grants will also be used to ease eligibility requirements and access to employment compensation, such as waiving work search requirements and the waiting week, and not charging employers directly impacted by COVID-19.

**EMERGENCY PAID SICK LEAVE**

The Emergency Paid Sick Leave Act requires that an employer (a private employer with fewer than 500 employees) provide to each employee paid sick time to the extent the employee is unable to work (or telework) due to a need for leave because:

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 a medical diagnosis;

4. The employee is caring for an individual subject or advised to quarantine or isolation;

5. The employee is caring for a son or daughter whose school or place of care is closed, or the childcare provider is unavailable, due to COVID-19 precautions; or

6. The employee is experiencing any other substantially similar condition as specified by the Secretary of HHS in consultation with the Secretary of Treasury and the Secretary of Labor.

The Secretary of Labor may exclude certain health care providers and emergency responders from coverage, as well as certain small businesses with fewer than 50 employees if imposing such requirements would jeopardize the viability of the business as a going concern.

A full-time employee is entitled to 80 hours of paid sick time and a part-time employee is entitled to the number of hours that such employee works, on average, over a 2-week period. Paid sick time may not carry over from one (1) year to the next.

Paid sick time shall be available for immediate use by the employee, regardless of how long the employee has been employed by an employer. An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under this Act.

Paid sick time shall not exceed $511 per day and $5,110 in the aggregate for a use described in paragraph (1), (2), or (3) above (generally, an employee’s own illness or quarantine; and $200 per day and $2,000 in the aggregate for a use described in paragraph (4), (5), or (6) (care of family members).

The employee’s required compensation shall not be less than the employee’s regular rate of pay. However, with respect to any paid sick time provided for any use described in paragraph (4), (5), or (6) above (care of family members), the required compensation shall be two-thirds (2/3) of an employee’s regular rate.

An employer signatory to a multiemployer collective bargaining agreement may, consistent with their bargaining obligations and collective bargaining agreements, fulfill their obligations under the Act by making contributions to a multiemployer fund, plan, or program, based on the hours of paid sick time each of its employees is entitled to under the Act while working under the multiemployer collective bargaining agreement, provided that, the fund, plan or program enables employees to secure pay from that source based on the hours they have worked. The short-term disability benefits offered through many of our clients’ welfare plans could possibly be used to meet this exception. However, benefit levels of those plans might have to be increased in order to meet the minimums established in the Act. If you are interested in exploring compliance via this route, please let us know.
HEALTH PLAN PROVISIONS

The Act also requires group health plans and health insurance issuers offering group or individual health insurance coverage (including a grandfathered health plan under the ACA) to provide coverage for COVID-19 testing (approved by the FDA) and items and services furnished during a health care provider office visit (which term includes in-person visits and telehealth visits), urgent care center, and emergency room visit.

These services must be provided without any cost sharing (including deductibles, copayments, and coinsurance), or prior authorization or other medical management requirements during the emergency period beginning on or after the date of the enactment of this Act.

EFFECTIVE DATE OF ACT

The Act takes effect 15 days after enactment and sunsets on December 31, 2020.