

FAMILIES FIRST CORONAVIRUS RESPONSE ACT PASSED

By [Kristel Espinosa, CPA](#), [Anna Harutyunyan, CPA](#)

March 23, 2020



Reading time: 5 minutes

The impact of the coronavirus on California and Texas businesses has been significant and sudden. This is highlighted by the news of forced closure of schools, bars, movie theaters, nightclubs, public gyms, and convention centers. This is part of a broad attempt to contain the spread of the virus as [COVID-19 cases continue to rise](#). The economic impact of these orders and changes is expected to be difficult for many businesses to manage. To ensure employees have access to paid benefits and job protection, Congress recently passed the [Families First Coronavirus Response Act](#). The Act provides benefits and assistance to states with unemployment benefits. However, it also implemented changes to paid sick leave and Family Medical Leave Act (FMLA) programs to provide stability to impacted employees. It also creates several new tax credits to help employers manage the additional expense.

To help our clients and friends of the firm understand the employers' new requirements and tax credits available, JLK Rosenberger has provided a summary of key points below:

Emergency Paid Sick Leave

- **Required Policy Changes** – Paid sick time must be extended to an employee who can not work because they have been subject to a coronavirus quarantine, been advised by a healthcare provider to self-quarantine, seeking a diagnosis, caring for a child whose care or school has been closed and employees seeking similar conditions as outlined by the Department of Health and Human Services (HHS).
- **Paid Leave Requirements** – Full time employees are to receive 80 hours of sick time, while part-time employees are allowed paid leave based on the average hours worked in a two-week period. These benefits are to be made available regardless of how long an employee has worked at a company. This additional sick time is only to be used in 2020 and can not be carried over into another year.
- **Compensation** – Any employee taking leave for themselves will be paid their normal wage or federal and state minimum wage, whichever is greater. Employees taking time off to care for family members will be paid at a 2/3 rate. Sick leave is limited to \$511 (capped at \$5,110) per day for leave taken to care for oneself and \$200 per day (capped at \$2,000) to provide care to a child or family member.
- **Social Security Exemption** – The wages paid for emergency sick leave will not be subject to the 6.2% social security tax for either the employer or employee.
- **Job Protection** – Businesses are not allowed to require workers to find replacements to cover hours or fire them for requesting sick leave.
- **Separation Payments** – Employers will not be required to reimburse or payout sick time outlined herein upon an employee's separation from employment.
- **Penalties** – Any company that fails to comply with the new law will be considered to have failed to pay minimum wages under the Fair Labor Standards Act and will be subject to penalties.
- **Exemptions** – The Secretary of Labor reserves the right to issue regulations that exclude certain healthcare and emergency responders, and exempt small businesses with less than 50 employees when compliance could create a going concern for the company.

Emergency Family Leave

Below are the highlights of the new family leave requirements, including:

- **Paid Emergency Leave** – Both private and non-private employers are required to modify their Family and Medical Leave Act (FMLA) programs to include up to 12 weeks of leave for employees who are either unable to work or are responsible to care for a minor whose school has been closed. These changes apply only to those employed for at least 30 days.
- **Leave Notice** – The new law requires employees to provide notice as soon as practical should leave be necessary.
- **Compensation Details** – The first ten days of leave can be unpaid, and employees can choose to use other paid time off to cover this period. Any time extending beyond this, an employee will be compensated at least 2/3 their normal pay rate. The limits have been set to \$200 per day, with a maximum benefit of \$10,000.
- **Position Retainment** – An employee on emergency family leave needs to be guaranteed their position, or equivalent, upon their return. Note this requirement does not apply to companies with less than 25 employees if the position held no longer exists due to a qualifying condition.
- **Social Security Exemption** – The wages paid for emergency family leave will not be subject to the 6.2% social security tax for either the employer or employee.
- **Exemptions** – The Secretary of Labor reserves the right to issue regulations that exclude certain healthcare and emergency responders, and exempt small businesses with less than 50 employees when compliance could create a going concern for the future of the company.

Tax Credits

Companies with employees affected by the Coronavirus taking paid time off can claim one, or more, tax credits.

- **Payroll Tax Credit for Paid Sick Leave** – Impacted companies can receive a tax credit for 100% of paid sick leave wages. The credit is applied against the employer's portion of Social Security taxes paid. The amount of the credit per employee is \$511 per day for those meeting the criteria outlined previously for self-care. For those who are caring for a family member, the credit is capped at \$200 per day. This amount can be increased to cover health insurance premiums an employer may be required to pay as required by the Act.
- **Self-Employed Sick Leave Credit** – Self-employed individuals can claim a refundable tax credit equal to 100% of sick leave taken as outlined above. Those caring for a sick family member or minor whose school/care providers have closed can receive a credit of 67% of sick leave taken. This provides benefits to those who would otherwise receive paid leave if they worked as a W-2 employee. The credit is capped at the lesser of \$511 per day or the average daily self-employment income.
- **Payroll Tax Credit for Emergency Family Leave** – An employer can receive a refundable credit of 100% for family leave wages paid. The credit is applied against the employer's portion of Social Security taxes. The amount of credit per employee is \$200 per day, with a maximum of \$10,000 for all quarters. The credit is available on wages paid once the required 10 days of leave has passed.
- **Self-Employed Family Leave Credit** – Self-employed individuals can claim a refundable tax credit equal to 100% of family leave taken. It can be claimed against self-employment taxes and is refundable against payroll taxes. This is designed to provide benefits to those who would otherwise receive paid leave if they worked as a W-2 employee. The credit is capped at the lesser of \$200 per day or average daily self-employment income for the year. It's important to note the benefits are limited to a period of 50 days.

Contact Us

The effective date for all changes is April 2, 2020, and expires on December 31, 2020. It is clear there are a number of changes that California and Texas employers will need to implement in the coming weeks. If you have questions about the information outlined above or need guidance during this uncertain time, JLK Rosenberger can help. For additional information, call us at 949-860-9895 or 818-334-8636, or [click here to contact us](#).

SUBSCRIBE

Start a Conversation

NAME *

COMPANY