

The CARES Act: What Employers Need to Know

On March 27, 2020, the largest economic stimulus package in American history was signed into law. Although the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) made several amendments to the Families First Coronavirus Response Act (“FFCRA”), the majority of the amendments were technical corrections that do not impact the substantive provisions of the FFCRA.



Here are the key amendments to the FFCRA that employers should be aware of:

1. **Employers May Choose to Exceed the Monetary Limits Set Forth in FFCRA for Paid Leave.** As originally drafted, paid leave under the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act could not exceed certain monetary limits. The CARES Act now states that employers are not *required* to pay employees more than the monetary limits in the FFCRA, thereby leaving the door open for employers who wish to provide additional compensation to employees above the monetary limits in the FFCRA. Any additional compensation, however, is not subject to a tax credit.
2. **Rehired Employees Are Eligible for Paid Leave Under the Family and Medical Leave Act (“FMLA”).** The CARES Act makes an employee who was laid off on March 1, 2020 or later, and subsequently rehired by the same employer, eligible for paid leave under the FMLA, so long as the employee was employed for at least 30 of the last 60 calendar days prior to layoff. This means that certain rehired employees will be able to access paid leave under the FMLA immediately upon rehire (thus eliminating the 30-day waiting period for these rehired employees). Remember, however, that paid leave under the FMLA expires on December 31, 2020, so an employee rehired after this date will not be entitled to this leave.
3. **Reimbursements for Federal Contractors.** The CARES Act gives federal agencies, through September 30, 2020, the ability to reimburse federal contractors for paid leave (up to an average of 40 hours per week and subject to other limitations) provided by the contractor to keep employees or subcontractors “in a ready state” if a contractor’s employees or subcontractors cannot perform work at their duty station or telework because their job duties cannot be performed remotely during the COVID-19 public health emergency.
4. **Tax-Credit Advances for Paid Sick and Paid FMLA Leave.** Under the FFCRA, employers are required to bear the up-front costs of paid sick and paid FMLA leave, and receive a dollar-for-dollar reimbursement from the Internal Revenue Service (the “IRS”) in the form of a tax-credit. The reimbursement process was expected to create cash-flow concerns for many employers without the reserves necessary to front paid sick and paid FMLA leave expenses. To address this concern, the CARES Act created a streamlined process where employers can request an advance of anticipated tax-credits and refunds. Additionally, the CARES Act provides penalty relief for employers who do not deposit employer-side Social Security taxes in anticipation of receiving a tax-credit for paid sick and paid FMLA leave. The IRS is expected to release additional guidance concerning the tax-credit advance process shortly.

The CARES Act also: (1) provides the Department of Labor with the authority to investigate and gather data to ensure compliance with the Emergency Paid Sick Leave Act; and (2) clarifies that employers cannot discriminate against employees who have taken emergency paid leave *or* (not “and,” as was originally required under the FFCRA) filed a complaint under the Act or participated in a proceeding to enforce the Act.

For more insights, please visit our [Coronavirus \(COVID-19\) page](#).

As you are aware, things are changing quickly and the aid measures and interpretations described here may change. This article represents our best understanding and interpretation based on where things currently stand as of March 30, 2020.