

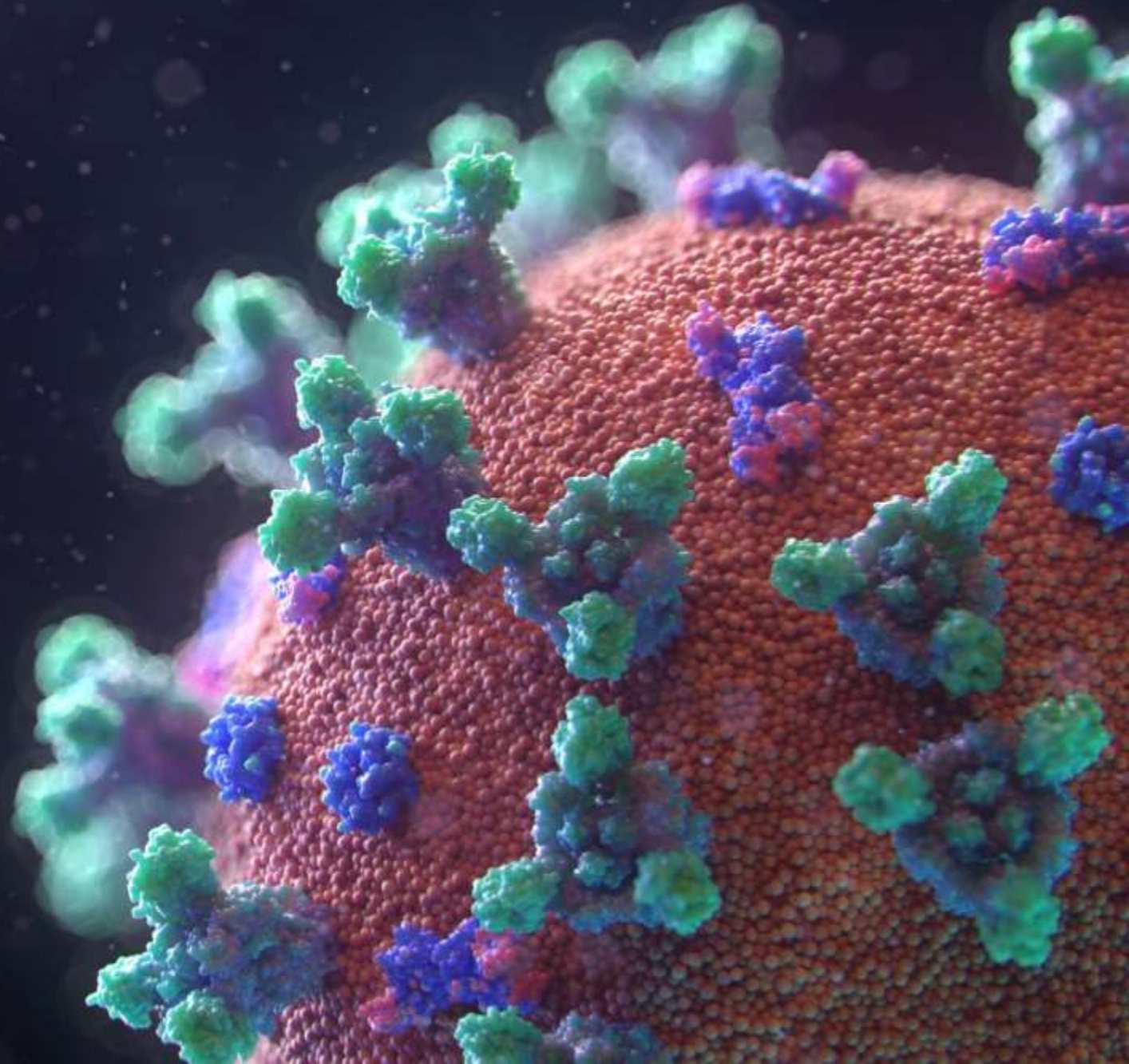


Families First Coronavirus Response Act – Making Sense of the Paid Leave Mandates

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Seyfarth Shaw LLP

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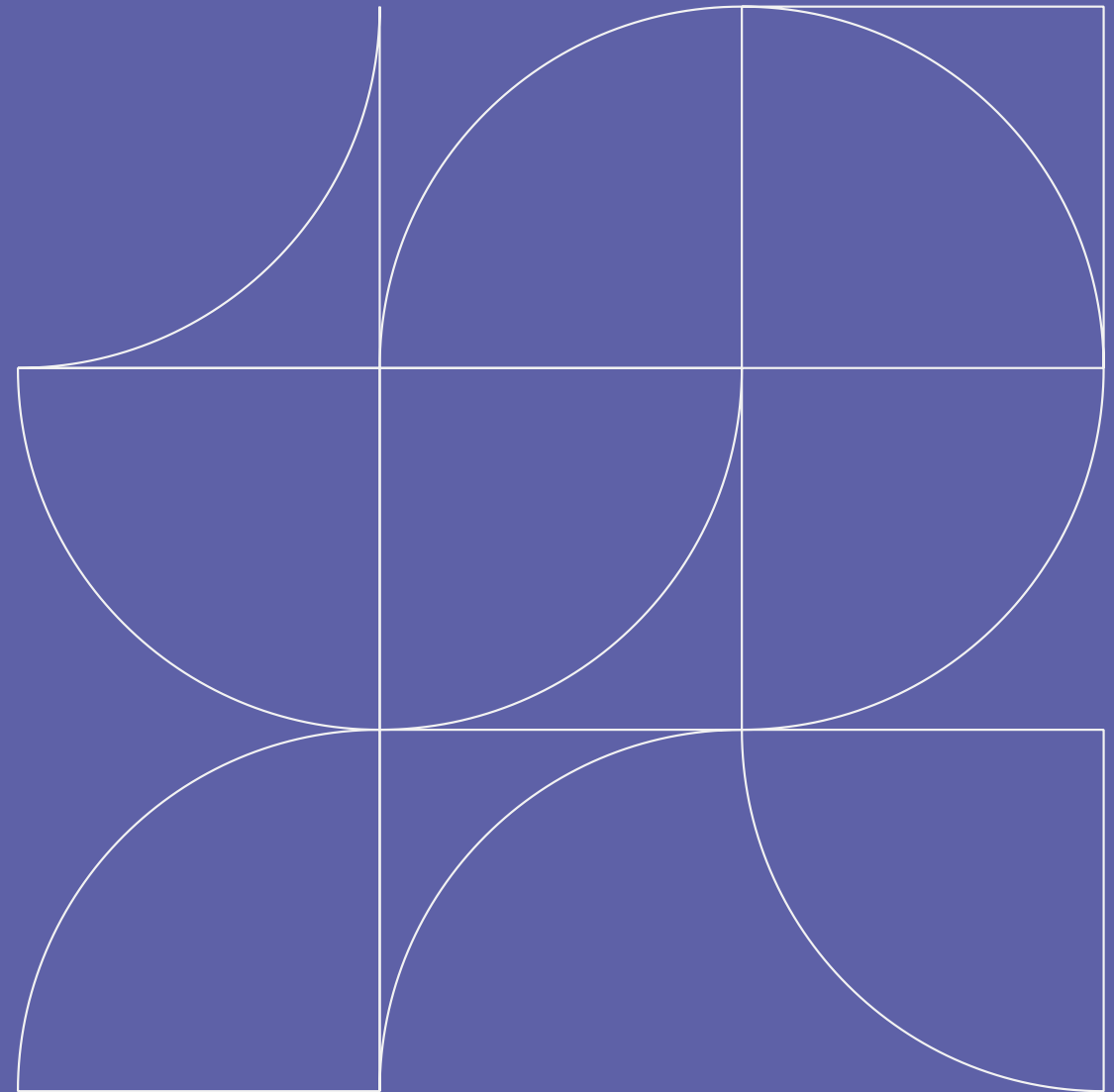


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Agenda

- 01 Families First Coronavirus Response Act Overview
- 02 Emergency Paid Sick Time
- 03 Emergency Family and Medical Leave Expansion

Families First Coronavirus Response Act Overview





Families First Coronavirus Response Act Overview

- Act was introduced on 3/11/2020
- House passed H.R. 6201 early morning 3/14/2020
 - While multiple versions were circulated prior to consideration, there were no hearings on the bill and there is no appreciable legislative history, such as committee reports, to provide guidance
- House issued “technical corrections” to H.R. 6201 on 3/16/2020
 - Did not impact all sections of the Act
- Senate passed H.R. 6201 on 3/18/2020 without changes
- President signed Act on 3/18/2020



- Act goes into effect in less than one week, i.e., **April 1, 2020** (per DOL FAQs)
- Legislation introduced by Speaker Pelosi during the Senate debate on the economic relief package would have made significant changes to the Act's leave provisions, but they were **not** adopted.
- Instead, Senate passed H.R. 748, its much-publicized \$2 trillion economic relief bill known as the “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act,” on March 25
- DOL accepting comments and suggestions for clarification via online Portal; Deadline March 29
- **Portal Link:** <https://ffcra.ideascale.com/>

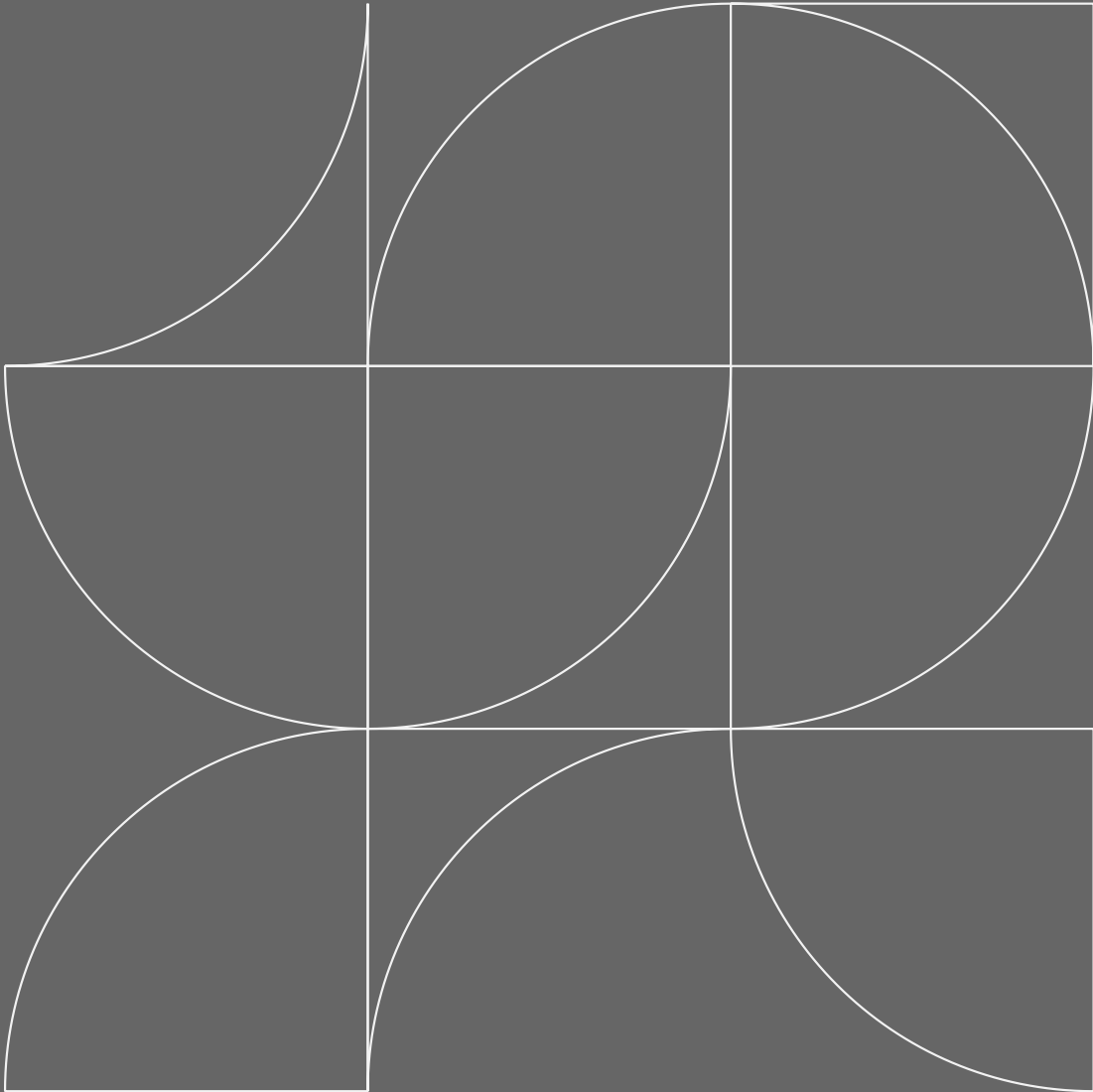


- Act has many provisions related to addressing the COVID-19 crisis
- **Highlights Include:** (a) paid family and medical leave (PFML), (b) paid sick time (PST), (c) tax credits for PFML and PST, (d) unemployment insurance, (e) medical plan components and (f) several immediate public health related matters
- **PFML and PST Mandates:**
 - Sunset on December 31, 2020
 - Only apply to private employers with *fewer than* 500 employees
 - PST available for broader reasons than PFML
 - Tax credits available to offset costs to covered employers



- **PFML:** New mandated PFML requirements are enforced, logically enough, under the enforcement provisions of the federal Family and Medical Leave Act
 - Includes enforcement by DOL and private causes of action
 - Act exempts employers with less than 50 employees from FMLA private causes of action, but not DOL enforcement
- **PST:** The mandated PST provisions are enforced under the Fair Labor Standards Act (which also includes DOL enforcement and private causes of action)
- **Enforcement Grace Period:** DOL issued notice stating that there will be a 30-day non-enforcement period for employers who demonstrate **good faith compliance efforts**
 - “Grace period” does not preclude private causes of action

Emergency Paid Sick Time

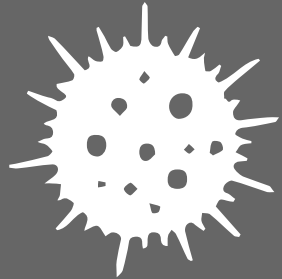


Paid Sick Time



- **Employer Coverage** – Does *not* apply to employers that employ 500 or more employees
 - Potential regulatory exemption for small employers regarding certain covered reasons for use
- **Employee Eligibility** – Broader than PFML; “Employee” generally means any individual employed by an employer
- No CBA exemption; Special rules under multi-employer bargaining agreements

Paid Sick Time



Qualifying conditions – Employee is unable to work or telework because:

- 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 concerns
- 3) The employee is experiencing ***symptoms*** of COVID-19 ***and seeking diagnosis***

Paid Sick Time



- **Qualifying conditions** – Employee is unable to work or telework because (con't):
 - 4) The employee is ***caring for an individual*** subject to a governmental quarantine/isolation order or health care provider recommendation
 - Does ***not*** need to 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 HHS Secretary

Paid Sick Time



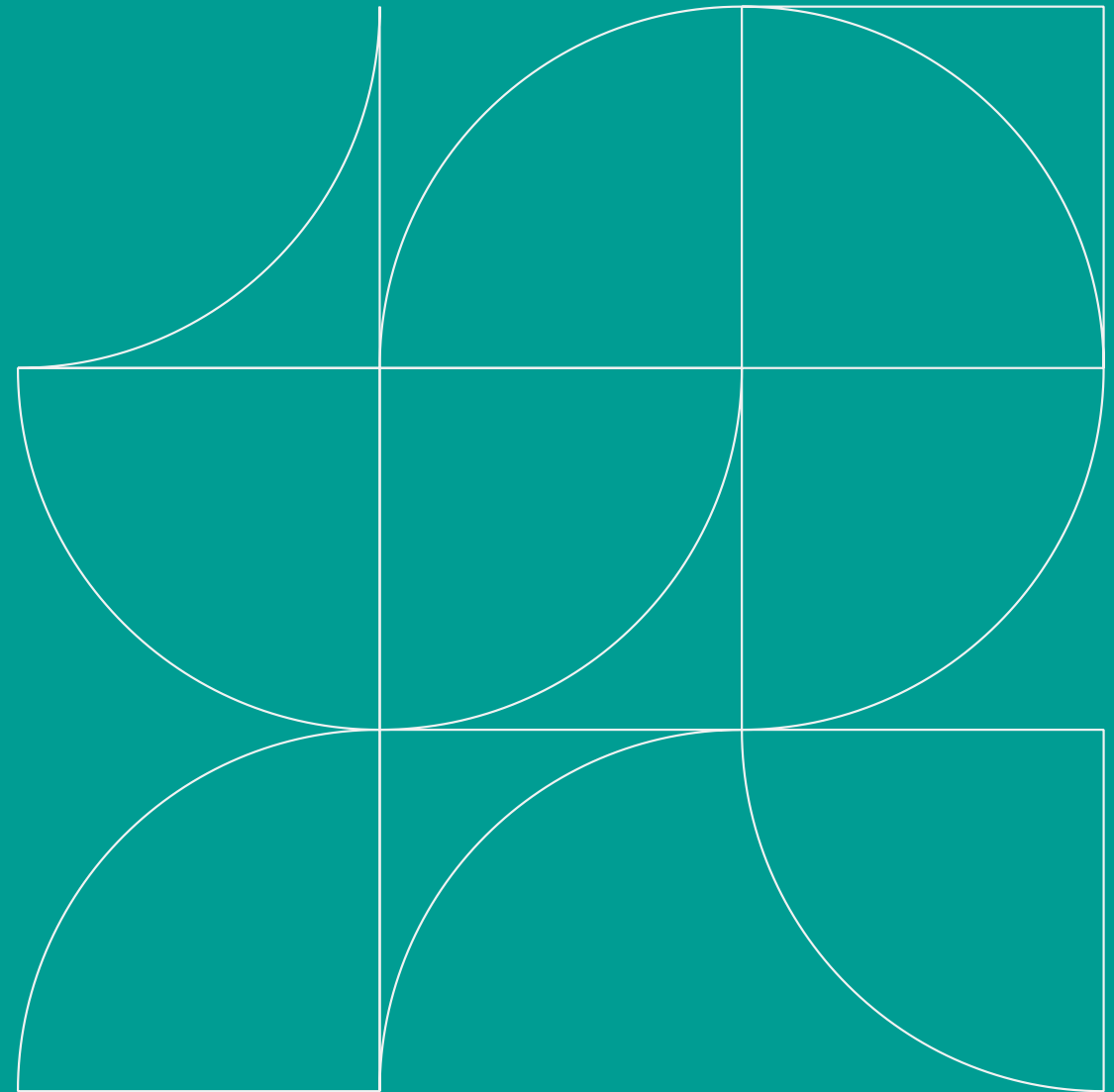
- Full-time → 80 hours of pay
- Part-time → Prorated based on avg. # of hours over two-weeks
- Pay set at highest of:
 - Employee’s “regular rate” (FLSA);
 - Federal minimum wage rate; or
 - State or local minimum wage rate;***unless...***
 - ...absence for is for reasons 4), 5), or 6)
→ then two-thirds
- Capped at \$511 per day and \$5,110 total (or \$200/\$2,000)
 - Depends on reason for use

Paid Sick Time



- Employees immediately eligible to use paid sick time
- Employers cannot require use of company-provided paid time off before an employee uses sick time under the Act
- No year-end carry-over
- No payout on termination or separation
- Employers cannot require employees to find replacements
- Posting obligation
 - **Model Notice:**
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- Anti discrimination, discipline and discharge provision, although limited scope

Emergency Family and Medical Leave Expansion



Paid Family and Medical Leave



- **Expands the FMLA:** Adds a new qualifying absence to the FMLA for “public health emergency leave” that is paid
 - Limited scope of what absences are actually covered
- **Employer coverage:** Does *not* apply to employers that employ 500 or more employees
 - Potential regulatory exemption for small employers
- **Employee Eligibility:** An employee who has worked for a covered employer for at least 30 calendar days
 - Standard is *not* regular FMLA criteria
 - CARES Act would add provision regarding certain rehires

Paid Family and Medical Leave



Consists of Paid and Unpaid Portion

- Employers must provide paid leave *after* 10 days of unpaid leave
- Employee may substitute other leave benefits during initial period; Also can receive PST under the Act during this period
- After 10-day period, employee can receive up to 10 weeks of leave
- Pay = Not less than two-thirds of “regular rate” (FLSA) multiplied by # of hours normally scheduled
- Capped at \$200 per day and \$10,000 total

Paid Family and Medical Leave



- Employee must provide advanced notice of foreseeable leave as soon as practicable
- Reinstatement rights
 - Potential exception for employers with less than 25 employees, due to negative business or operational changes
- No CBA exemption; Special rules under multi-employer bargaining agreements
- Act is silent on whether intermittent leave is permitted; But DOL FAQs clarify
- Quarterly tax credits to offset employer payments

Questions?

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thank you