



March 19, 2020

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Yesterday, President Trump signed the Families First Coronavirus Act ([H.R. 6201](#)) into law. The Act contains provisions important to you not only as an employer, but also as a self-funded plan sponsor.

ALL HEALTH PLANS MUST COVER CORONAVIRUS TESTING WITH NO COST-SHARING

The Act requires all health plans, including self-funded and fully insured plans regardless of grandfather status, to cover coronavirus testing with no cost sharing to the plan participant. Covered services must include in- and out-of-network facility and professional fees incurred in the course of evaluating the patient's need for testing and the testing itself. Plans cannot require pre-authorization for any services related to coronavirus testing. The Act applies to all testing performed from March 18, 2020 through December 31, 2020.

PLAN SPONSOR ACTION REQUIRED

No action is needed at this time for employers offering fully insured plans. Self-funded plan sponsors should contact their third-party administrator (TPA) to confirm coronavirus testing procedures and associated charges have been added to their list of ACA preventive care services which are covered with no cost share. The Secretary of Health and Human Services will determine a coding mechanism for health care providers to use when submitting claims so that testing-related services can be identified by the insurer or TPA and paid with no cost share. If you are a Foster & Foster client, your consultant will contact your TPA on your behalf and provide you with an update.

***Note for grandfathered health plans:** If a grandfathered plan does not provide coverage for all ACA mandated preventive care services with no cost sharing, a plan amendment is recommended to address the benefit requirements of the Families First Coronavirus Act. Please contact your Foster & Foster consultant for assistance.*

The costs of treating a covered person who contracts COVID-19 (the disease caused by the coronavirus) is not addressed by the Act, so those charges would be paid the same as any other illness. Plans that do not currently provide coverage for telehealth visits may want to consider adding such coverage at least for the remainder of 2020. A coronavirus vaccine is currently in development and will likely be added to the list of ACA-mandated preventive services when it becomes available.

NEW EMERGENCY PAID SICK LEAVE REQUIREMENT FOR EMPLOYERS

Covered employers (those with fewer than 500 employees) are required to immediately provide employees who are unable to work (or telework) with up to 80 hours of paid sick leave (or the equivalent of two weeks of hours for part-time employees) for use under the following circumstances:

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 medical diagnosis

4. The employee is caring for an individual who is quarantined or self-isolating due to a governmental order or health care provider recommendation
5. The employee is caring their child due to the closure of the child's school or place of care, or the child care provider of the child is unavailable, due to COVID-19 precautions
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Labor

The paid sick time must be provided on an immediate basis, regardless of how long the employee has been employed by the employer. An employer may not require an employee to use other paid leave provided by the company prior to using the sick time provided by the Act. If leave is taken for the reasons described in bullets 1-3 above, the rate of pay must be the greater of the employee's regular rate of pay or the applicable minimum wage and is limited to \$511 per day (\$5,110 aggregate). If leave is taken for the reasons described in bullets 4-6 above, the rate of pay shall be 2/3 of the greater of the employee's regular rate of pay or the applicable minimum wage and is limited to \$200 per day (\$2,000 aggregate). Sick time provided under the Act will cease to be available beginning with the employee's next scheduled workshift immediately following termination of the need for sick time for any of the reasons stated above. The Secretary of Labor is expected to issue guidelines to assist employers in calculating the amount of sick time pay within 15 days of the enactment of the Act. The expanded paid sick leave does apply to loss of work because the business closed, or because work was available only to employees who could work remotely. The emergency sick leave requirements shall take effect no later than 15 days after enactment and will end December 31, 2020. Employers are required to post an employee notice of the requirements of the Act in the same place that other mandated employee notices are posted. A model notice will be provided by the Department of Labor within 7 days of enactment.

NEW FMLA REQUIREMENT FOR EMPLOYERS WITH FEWER THAN 500 EMPLOYEES

For leave extending beyond the two weeks covered by the emergency leave requirement, the Act also expands the Family and Medical Leave Act (FMLA) in the event of a "public health emergency."

The FMLA section of the Act requires covered employers (those with fewer than 500 employees) to allow 12 weeks of FMLA leave for employees who have been employed for 30 calendar days. The first two weeks may be unpaid (10 working days), although employees may elect to use other paid benefits to cover it. Unlike normal FMLA leave, the remaining time must be paid at 2/3 the employee's regular rate up to a maximum of \$200 per day (\$10,000 total). The FMLA leave under this extended provision can be used when the employee is unable to work (or telework) due to a public health emergency with respect to the coronavirus for one of the following reasons:

- To comply with a recommendation or order by a health authority or a health care provider that the physical presence of the employee on the job would jeopardize the health of others because of the (a) exposure of the employee to coronavirus, or (b) exhibition of symptoms of COVID-19 by the employee, and the employee is unable to both perform the functions of the job and comply with the recommendation or order.
- To care for a child of the employee who is under 18 years old if the elementary or secondary school or place of care has been closed, or the childcare provider of the child is unavailable, due to a public health emergency.

With respect to the FMLA provisions, the Act allows subsequent regulations to exempt small businesses with fewer than 50 employees when it would jeopardize the viability of the business.

The FMLA expansion provisions will go into effect no later than 15 days after the enactment date and will remain in effect through December 31, 2020.

PLAN SPONSOR ACTION RECOMMENDED

The emergency paid leave and FMLA extension provisions may complicate the leave provisions of some self-funded plans. Plan sponsors who are considering changes to their company's leave policies are encouraged to consider how those changes integrate with their health plan eligibility and leave provisions. Plan modifications may be required to maintain coverage eligibility as intended. Please contact your Foster & Foster consultant if you are considering leave policy changes that may impact health plan eligibility.

ADDITIONAL INFORMATION

This communication is a summary of just a few of the provisions (Divisions C, E, and F) of the Families First Coronavirus Response Act. The Act also provides financial assistance to various federal departments and programs (Division A), as well as assistance and mandates in the areas of Food and Nutrition Services (Division B), Unemployment Insurance (Division D), and payroll tax credits (Division G). To read the full text of the Act, please go to <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>.