



CULP ELLIOTT & CARPENTER, P.L.L.C.

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## LEGAL ADVICE TO HELP MINIMIZE TAXES AND PROTECT ASSETS

### THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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*The Families First Coronavirus Response Act (the “Act”) provides relief to families impacted by COVID-19. Employers with fewer than 500 employees must provide their employees with paid leave for specified reasons related to COVID-19 and may be eligible for certain tax benefits. Culp Elliott & Carpenter is here to help employers and employees understand their rights and obligations under the Act.*

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#### **Employee Rights**

**Two (2) Weeks Initial Paid Sick/Family Leave.** Any employee is entitled to leave as follows:

- *Two weeks (up to 80 hours) of **paid sick leave** at the employee’s regular rate of pay where the employee cannot work (or telework) because the employee is (i) quarantined under government or doctor’s orders, and/or (ii) experiencing COVID-19 symptoms and seeking a medical diagnosis (up to a maximum of **\$511 per day, or \$5,110 total** over the entire two-week period), or*
- *Two weeks (up to 80 hours) of **paid sick leave** at **two-thirds** the employee’s regular rate of pay because the employee cannot work (or telework) because the employee is caring for (i) an individual who is quarantined under government or doctor’s orders or (ii) the employee’s child under 18 whose school or child care provider is closed due to COVID-19 (up to a maximum of **\$200 per day, or \$2,000 total** over the entire two-week period).*
- An employee who experiences both of the previous situations is entitled to a total of two weeks (80 hours) of initial leave based on either situation or a combination of the two. The employee cannot take two weeks in the first situation and then another two weeks in the second situation.
- The hourly limits above are adjusted for part-time employees.

**Ten (10) Additional Weeks Expanded Paid Family Leave.**

- An employee who has been employed *at least 30 days* and who has already taken two weeks initial leave is eligible for *up to an additional 10 weeks of **paid expanded family and medical leave** at **two-thirds** the employee’s regular rate of pay* where the employee cannot work (or telework) because the employee is caring for the employee’s child whose school or child care provider is closed due to COVID-19 (up to a maximum of **\$200 per day or \$10,000 total** over the entire additional ten-week period).

**Dates.** The paid leave provisions apply to leave taken between April 1 and December 31, 2020.

**Health Insurance.**

- If the employer provides group health coverage, the employee is entitled to continued group health coverage, including family coverage, during expanded family and medical leave on the same terms as if the employee had continued to work.
- The employee must continue to make normal contributions to the cost of health coverage.

**Teleworking.**

- If the employee is able to telework while caring for children, initial paid family leave and expanded family and medical leave are **not** available.
- If the employee is unable to perform teleworking tasks or work the required teleworking hours because the employee is caring for a child whose school or place of care is closed due to COVID-19, or because of one of the qualifying reasons for paid sick leave, then the employee can take both initial paid sick/family leave and expanded family and medical leave.

Intermittent Leave.

- The employer may allow the employee take paid leave intermittently while teleworking.
- If the employee cannot telework the employee's normal schedule of hours because the employee is caring for a child whose school or place of care is closed due to COVID-19, the employer and employee may agree to allow the employee to take expanded family medical leave intermittently while teleworking.

Employer Obligations and Tax Benefits

Who is covered. Public and private employers with fewer than 500 employees.

Exception. Employers with fewer than 50 employees may claim an exemption from the Act's paid leave provisions if compliance would jeopardize the viability of the business as a going concern, defined as follows:

- Providing paid leave would cause the business's expenses and financial obligations to exceed available business revenues and to cease to operate at a minimal capacity;
- The absence of the employee or employees requesting paid leave would entail a substantial risk to the business's financial health or operational capabilities because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not enough workers who are able, willing, qualified, and available at the time and place needed to perform the tasks provided by the employee or employees requesting paid leave, and those tasks are needed for the business to operate at a minimal capacity.

Payroll Tax Credit.

- Employers are eligible for a dollar-for-dollar payroll tax credit for paid leave required by the Act, subject to the following limitations:
  - Credit for Initial Paid Sick Leave is limited to \$511 per day or \$5,100 total per employee
  - Credit for Initial Paid Family Leave is limited to \$200 per day or \$2,000 total per employee
  - Credit for Expanded Paid Family Leave is limited to \$200 per day or \$10,000 total per employee
- Employers are also eligible to receive potential tax credit advances for both paid sick leave and paid family leave under the Act, subject to the limitations above.
- The IRS provides the following illustrations:
  - If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.
  - If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.
  - Equivalent child care leave and sick leave credit amounts are available to self-employed individuals under similar circumstances. These credits will be claimed on their income tax return and will reduce estimated tax payments.

**Culp, Elliott & Carpenter is here to help.** We understand the challenges faced by small business owners and family caregivers during this unprecedented time. We are here to help you understand your rights and obligations under the Families First Coronavirus Response Act. The foregoing is a summary of certain provisions of the Act and does not address all applicable situations and details. Please reach out to one of our attorneys if you need assistance or additional information to comply with this new law or to take advantage of the benefits the new law provides to you.