



Summary of the Families First Act & Expansion of Mandatory Paid Leave Provisions

Last Updated on March 19, 2020

On Tuesday March 18th, the President signed into law the Families First Coronavirus Response Act (insert bill). The Bill originally was passed by the U.S. House of Representatives on Saturday March 14th and was substantially amended by the House on Monday evening, to ensure passage at the Senate. The Senate enacted the amended House bill in the late afternoon of March 18th, and the President signed it that evening. The law addresses several emergency situations involving the coronavirus COVID-19. Most important to the landscape industry are provisions that establish and mandate a substantial paid leave program for employees that are directly impacted by COVID-19.

The act puts in place a short term (2 week) paid leave mandate and a longer term (12 week) partially-paid FMLA extension that is to be paid by the employers and for which employers receive a direct tax credit. NALP supports paid leave guarantees to protect all employees in the landscape professions, but advised against placing that burden on landscape companies as opposed to funding this through the government.

There are 15 days until the Act becomes effective; employers should not try to “advance” leave/paid leave allowances during this time as those likely will not “count” towards diminishing the employees’ statutory entitlement or the corresponding employer tax credit. During the next 15 days we expect the Department of Labor (DOL) to publish a model notice and possibly rules or guidance that will detail aspects of the mandate as well as a possible exemption for small businesses (50 employees and under) with respect to the FMLA expansion where compliance would jeopardize the viability of the entity.

The Families First Act is just the beginning of a massive stimulus package from the federal government and we expect several more integrations over the coming weeks to infuse capital into our economy and protect business, people and their families. The Senate is set to lead on the next bill and Senate Majority Leader McConnell after passing the Families First Act state:

“I will vote to pass their bill. This is a time for urgent bipartisan action, and in this case, I do not believe we should let perfection be the enemy of something that will help even a subset of workers.

“However, the House’s bill has real shortcomings. It does not even begin to cover all of the Americans who will need help in the days ahead. And more specifically, it achieves one of its signature policies by imposing a new, untested mandate on small businesses

without guaranteeing they will have sufficient funds in advance to finance this new employee benefit.

“Everyone agrees that workers need relief. Republicans are working on bold solutions to help individuals and families as we speak. But small businesses need relief too.”

NALP is actively lobbying on your behalf on Capitol Hill and we will provide any and all updates when they become available. Please use the below information to assist in making arrangements with your human resources personnel prior to April 2, 2020. Details of the two type of paid sick leave are below:

1. Emergency Paid Sick Leave
2. Paid Family Medical Leave

1. Emergency Paid Sick Leave

Which Employers Must Pay

All private-sector employers with fewer than 500 employees and all public agencies regardless of size will be required to provide employees with emergency paid sick leave.

DOL has the option to promulgate a rule to exempt small businesses with fewer than 50 employees from the requirement of paying for sick leave if this would jeopardize the viability of the business as a going concern.

Which Employees Are Eligible

1. the employee is subject to federal, state, or local quarantine or isolation orders 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 COVID-19 symptoms and seeking a medical diagnosis;
4. the employee is caring for an individual who is subject to an order described in bullet #1 or has been advised as described in bullet #2 (“individual” not defined);
5. the employee is caring for a child because the child’s school, place of care, or child care provider is closed or unavailable due to COVID-19;
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 the Treasury and the Secretary of Labor

Amount of Pay

Employer shall provide 80 hours of paid sick time to full-time employees on top of and ahead of any other existing paid leave programs once this Act becomes effective (April 2). Part-time employees are required to receive the number of hours that they work, on average, over a 2-week period. An employer is prohibited from requiring an employee to use other paid leave first.

- Employers must pay employees their full wages, *not to exceed* \$511 per day and \$5,110 in the aggregate, for a use described in points #1, 2, or 3 above. For all other uses of paid sick time (points #4, 5, or 6 above) the employer must pay employees two-thirds of their wages, *not to exceed* \$200 per day and \$2,000 in the aggregate.

Eligibility Timeline

Becomes effective 15 days from enactment which is Thursday April 2, 2020. The eligibility to claim this leave will expire on December 31, 2020.

Employer tax credit

Employers will receive a 100 percent refundable payroll tax credit on the wages required to be paid.

2. Emergency Family and Medical Leave Expansion Act (includes a paid leave component)

Which Employers Must Pay

All private-sector employers with fewer than 500 employees will be required to provide employees with public health emergency leave under an expansion of the Family and Medical Leave Act (FMLA).

DOL has the option to promulgate a rule to exempt small businesses with fewer than 50 employees from the requirement of paying for sick leave if this would jeopardize the viability of the business as a going concern.

Which Employees Are Eligible

1. Leave is available only to employees who are unable to work or telework due to a need for leave to care for a son or daughter under 18 years of age if their school, place of care, or child care provider is closed or unavailable due to a public health emergency related to COVID-19 (declared by a federal, state, or local authority).
2. An employee must have been employed with their employer for at least 30 calendar days in order to use the emergency leave. An employee does not have to be full-time.

Amount of Pay

The first ten days of Emergency FMLA Expansion Act leave is unpaid. Employees may substitute the Emergency Paid Sick Leave (reason 5) during this time. If the employee has already used up their Emergency Paid Sick Leave, then they may use other accrued paid leave to “cover” the unpaid leave.

Leave under the FMLA Expansion Act must be paid at an amount no less than two-thirds of the employee’s wages based on the number of hours the employee would have usually been scheduled to work and subject to the following cap:

- Paid leave *not to exceed* \$200 per day and \$10,000 in the aggregate

Employees are entitled, upon return from leave, to be restored to their job position or to an equivalent position with equivalent employment benefits, pay, and other terms/conditions of employment. There is a statutory exception for employers of fewer than 25 employees if the employee's position is no longer available due to economic downturn and the employer completes several steps to try to restore the employee to an equivalent position.

Eligibility Timeline

Becomes effective 15 days from enactment which is Thursday April 2, 2020. The eligibility to claim this leave will expire on December 31, 2020.

Employer tax credit

Employers will receive a 100 percent refundable payroll tax credit on the wages required to be paid