



“Families First Coronavirus Response Act”

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As this pandemic continues, the Wisconsin Association of School Boards anticipates that state and federal agencies may provide additional specific guidance regarding the provisions of the Families First Coronavirus Response Act. In addition, WASB anticipates that additional State and Federal legislation will be forthcoming regarding COVID-19. WASB will update its Website as new information is received. Districts are encouraged to contact the WASB with any questions.

In an effort to ease the financial strain being placed on many individuals as a result of the COVID-19 pandemic and the subsequent efforts to temper the spread of the virus, on Wednesday, March 18, 2020, the President signed the Families First Coronavirus Response Act. The full-text of the Act may be accessed at <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>.

In addition to expanding family and medical leave and providing emergency paid sick leave (both areas that will be covered in greater detail below), the Act included several sections designed to assist individuals, families, and others during this unprecedented time. Examples include the following:

1. Inclusion of provisions that increase the availability of nutritional assistance to households with eligible children, including the school lunch and school breakfast programs, child and adult care food program, and summer food service program. Provisions include nutrition waivers, reduced nutritional requirements, the “Maintaining Essential Access to Lunch for Students Act (MEALS),” and the “COVID-19 Child Nutrition Response Act.”
2. Creation of the “Emergency Unemployment Insurance Stabilization and Access Act,” which provides federal funding to states where unemployment compensation claims increase by at least 10 percent over the same quarter in the previous calendar year and where the state has demonstrated steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants. This may include waiving work search requirements and the waiting week, and non-charging employers directly impacted by COVID–19. See [Emergency Order #7](#), signed by Governor Evers on March 18, 2020, regarding Wisconsin’s efforts to ease eligibility requirements and access to unemployment compensation.
3. Requirements for health insurance plans to provide coverage without any cost sharing requirements (including deductibles, copayments, and coinsurance) or prior authorization or other medical management requirements for certain medical procedures, items, and services specified in the Act.

4. Creation of employer payroll credits for required payment of paid sick leave and emergency family and medical leave under the Act.
5. New obligations for employers to provide notice to employees of the requirements described in the Act. The Secretary of Labor will provide, not later than 7 days after the date of enactment of the Act, a model notice that employers may use to satisfy this obligation.

EMERGENCY FAMILY AND MEDICAL LEAVE

Under this section of the Act, the FMLA has been expanded by adding a new section that will allow the “eligible employees” of an “employer” who are experiencing a “qualifying need related to a public health emergency” to receive 12 weeks of leave during the period beginning on the date the Emergency Family and Medical Leave Expansion Act takes effect, and ending on December 31, 2020.

For purposes of this section of the Act, eligible employees include those individuals who have been employed for at least 30 calendar days by the employer.

At this time, WASB recommends, due to a combination of the new amendments made by the Act and separate, pre-existing provisions in the FMLA that jointly affect the definition of an “employer,” that all school districts should initially assume that they will be required to implement the emergency family and medical leave provisions of this new legislation. However, that is not certain. School districts with 500 or more employees and school districts with fewer than 50 employees should monitor subsequent WASB communications and federal guidance, or consult with local legal counsel, for potential clarifications regarding their specific obligations.

The uncertainty regarding whether all school districts are covered employers under this part of the Act arises because the Act this is an amendment to the Federal Family and Medical Leave Act. On one hand, this Act replaces the provision in the Federal FMLA that defines covered employers as those with 50 or more employees with the language regarding employers with fewer than 500 employees. On the other hand, other provisions of the Federal FMLA that were not amended by this new legislation state the FMLA covers all school districts and public agencies, although employees who work for school districts with less than 50 employees have no rights under the FMLA. As a result, it is possible and perhaps likely that school districts with more than 500 employees are covered employers subject to this part of the Act. It is also not clear what the rights of school districts with less than 50 employees are. The Act authorizes the Secretary of Labor to provide waivers for employers with less than 50 employees. It is possible that the Secretary of Labor may provide waivers for school districts with less than 50 employees.

Finally, with respect to leave under the Act, the term ‘qualifying need related to a public health emergency’, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

The first 10 days for which an employee takes leave may consist of unpaid leave or an employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave. Employers may not require employees to use paid time off during the first 10 days of leave.

Following the initial 10 days of unpaid leave, employees will be eligible to receive up to 10 additional weeks of paid leave. Paid leave shall be calculated by multiplying two-thirds the employee’s regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work but cannot exceed \$200 per day and \$10,000 over the entire 10-week period of paid leave.

Because the Act only adds a new category for leave entitlement under Section 102 of the FMLA, it does not appear that the Act provides any additional days/weeks of family and medical leave beyond what employees were entitled to prior to the enactment of the Act. In other words, for example, an employee who has already used 12 weeks of FMLA would not receive an additional new 12 weeks of leave between the effective date of the Act and December 31, 2020.

EMERGENCY PAID SICK LEAVE

Under this section of the Act, an employer shall provide up to 80 hours of paid sick time for each full-time employee (average hours worked per two-week period for part-time employees) to the extent that the employee is unable to work or telework because of any of the following:

1. Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. Employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
5. Employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
6. 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.

For individuals utilizing paid sick leave as a result of reasons 1., 2., or 3., above, payment for sick leave will be calculated based on the employee's regular rate multiplied by the number of hours the employee would otherwise be normally scheduled to work. Under these circumstances, the maximum daily payment will be \$511 per day and \$5,110 in the aggregate.

For individuals utilizing paid sick leave as a result of reasons 4., 5., or 6., above, payment for sick leave will be calculated based on two-thirds the employee's regular rate multiplied by the number of hours the employee would otherwise be normally scheduled to work. Under these circumstances, the maximum daily payment will be \$200 per day and \$2,000 in the aggregate.

The paid sick time under the Act shall be available for immediate use by the employee for the purposes described above, regardless of how long the employee has been employed by an employer. For purposes of this Section of the Act, covered employer includes a public agency or any other entity that is not a private entity or individual and employs 1 or more employees.

In addition, although some employee handbooks or Board Policies require employees to find substitute coverage before they may be approved for leave, the Act specifically disallows this practice by stating that employers may not require, as a condition of providing paid sick time under the Act, that the employee involved search for or find a replacement employee to cover the hours during which the employee is using paid sick time.

Finally, employers may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under the Act.

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