

# Families First Coronavirus Response Act

## Impact on Ministries in the Concordia Plans

3/18/20

What are the items covered by the Families First Coronavirus Response Act that may pertain to you as an employer?

- Emergency Paid Sick Leave
- Emergency Family and Medical Leave (including paid leave)
- Tax Credits for Paid Sick and Paid Family and Medical Leave (this is intended to reimburse employers for the amount paid employees under the prior two items)
- Emergency Unemployment Insurance (generally inapplicable to churches)
- Coronavirus Testing: Requires group health plans to cover Coronavirus Disease 2019 (COVID-19) testing with no cost sharing; waives cost sharing under Medicare for related provider visits (testing already covered)

Please see below for more details.

### **Paid Sick Leave**

The bill requires employers with fewer than 500 employees and government employers to provide employees two weeks of paid sick leave due to the following circumstances related to the COVID-19:

1. The employee is subject to a federal, state, or local quarantine or isolation order;
2. The employee has been advised by a health care provider to self-quarantine;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual to which points 1 or 2 apply;
5. The employee is caring for a child if the child's school or place of care has been closed or the child-care provider is unavailable due to COVID-19 precautions; or,
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Labor and the Treasury.

For employees taking paid sick leave for the first three reasons above, sick pay must be calculated at no less than the employee's regular rate of pay, or the minimum wage (if that is greater). For paid sick leave used by an employee for reasons four through six above, required sick pay must be at least two-thirds of an employee's regular rate of pay or the minimum wage (if that is greater). Pay for such leave shall not exceed \$511 per day and \$5,110 total for reasons one through three, and \$200 per day and \$2,000 total for reasons four through six.

Full-time employees are entitled to receive pay for up to two weeks (80 hours) and part-time employees are entitled to receive pay for the typical number of hours that they work in a typical two-week period. Paid sick leave is available for immediate use, regardless of how long the employee has been employed.

An employee may first use the paid sick leave under the bill before using vacation, paid time off or other sick days already provided by the employer. Employers cannot require employees to use vacation, paid time off or other sick days before using the paid sick leave provided under the bill. Employers are also prohibited from requiring an employee to search for or find a replacement employee to cover the hours during which the employee is using paid sick time. A notice will also be prepared by the Secretary of Labor within seven days of the bill's enactment that each employer must post in conspicuous places in the workplace regarding this new paid sick leave.

## **Paid Family and Medical Leave**

The bill provides employees of employers with fewer than 500 employees the right to take up to 12 weeks of job-protected leave under the Family and Medical Leave Act (FMLA) to be used to care for their child if the child's school or place of care has been closed, or the child-care provider is unavailable, due to COVID-19. Such leave must be provided to employees who have been employed for at least 30 days and who are unable to work (or telework) under these circumstances.

Under the bill, the first ten days of this leave may be unpaid. Following that, employees must be paid by their employers at least two-thirds of the employee's usual pay, however, the paid leave shall not exceed \$200 per day or \$10,000 total. The bill contains requirements for employees with varying hours of work (and therefore receiving varying pay). Employees may elect to substitute any accrued vacation, personal leave or sick leave for the unpaid leave.

The new leave requirements will begin on the start date selected by the Secretary of the Treasury (which can be no later than 15 days after the bill is passed), and will extend through December 31, 2020. The Secretary of Labor has the authority to issue regulations exempting employers with fewer than 50 employees, if these leave requirements would jeopardize the viability of the business.

This part of the bill modifies the FMLA, so many of the rules applicable to the FMLA will apply to this leave. FMLA leave still is limited to 12 weeks in a 12-month period, so some employees may not be entitled to any leave under the bill, or may be entitled to less than 12 weeks (if they have already used some or all of their 12 weeks of FMLA).

Generally upon return from leave, employees must be restored to the position they previously held, but under certain conditions this won't apply to employers employing fewer than 25 employees.

## **Tax Credits for Paid Sick and Paid Family and Medical Leave**

To "reimburse" employers for the amount paid for the above leave, a credit will be allowed against payroll taxes (FICA) for each calendar quarter in an amount equal to 100 percent of the qualified sick leave wages or qualified family leave wages paid by that employer with respect to that calendar quarter. The credits apply only to employers with fewer than 500 employees.

For paid sick leave, the daily wage threshold is at \$511 per day except when the leave is paid to an employee to care for or assist a family member of the employee or to care for a child of the employee if school or day care is not available, in which case the threshold is \$200 per day. The sick leave credit is capped at \$5,110 or 10 days.

The amount of qualified family leave wages taken into account cannot exceed \$200 for any day (or portion) the individual is paid qualified family leave wages and \$10,000 total per individual with respect to all calendar quarters.

The amount of credit described in the last two paragraphs may be increased by the amount paid by the employer for health plan coverage of an employee while on the paid sick and/or family and medical leave required by this bill. More details on this additional credit are to be set forth in guidance from the Secretary of the Treasury.

This credit may only be claimed for paid sick and FMLA leave taken during the period beginning on the start date selected by the Secretary of the Treasury (which can be no later than 15 days after the bill is passed) and ending December 31, 2020. If the amount of the credit exceeds the employer's share of FICA taxes, the excess is refundable. The bill is not entirely clear about the manner in which credits may be claimed for paid sick leave for ministers. Hopefully this will be clarified in regulatory guidance.

## **Unemployment Insurance**

The bill provides additional funding for unemployment compensation administration and full federal funding of extended unemployment compensation for a limited period for states that receive certain types of emergency administration grant funding. More specifically, if a state has more than a 10 percent increase in unemployment, there is additional funding made available to help states ease eligibility requirements. This funding only may be helpful if your ministry must terminate or lay off employees and your ministry's employees are entitled to unemployment compensation. Churches and some other ministries generally are exempt from this tax, although the exemption varies by state.

## **Health Coverage**

The bill requires group health plans and health insurance issuers offering group or individual health insurance coverage to cover COVID-19 testing with no cost sharing (in vitro diagnostic products and related items and services during provider visits). The bill also waives cost sharing under Medicare for related provider visits (testing already covered).

The Concordia Health Plan covered this testing through all health plan administrators with no cost sharing before it was required by the passage of this bill.