

JOHNSON & BELL

Families First Coronavirus Response Act (The "Act") Emergency Family and Medical Leave Expansion Act ("FMLA Expansion Act")

On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act. The Act is effective from April 2, 2020 to December 31, 2020 and temporarily expanded certain aspects of the FMLA, including the size of employers that are subject to the law, the employees who qualify for benefits, and the requirement of paid leave.

1. **Covered Employer** — The newly implemented emergency provisions under the FMLA apply to all employers with 500 employees or less. The Act allows for some exclusions, including healthcare providers and emergency responders. Small businesses with fewer than 50 employees may also be excluded if providing emergency leave would jeopardize the viability of the business as a going concern. Please note that these exclusions are not automatic.
2. **Qualified Employee** — A qualified employee under the FMLA Expansion Act includes any employee who has been working for an employer for at least 30 days. This is far shorter than the 12-month and 1,250 hour requirements of traditional FMLA provisions.
3. **Reason for the Leave** — The FMLA Expansion Act requires that leave be provided to a qualified employee who 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 an emergency related to COVID-19.
4. **Required Leave Benefits** — Employers are required to provide qualified employees with up to 12 weeks of leave under the FMLA Expansion Act. The first 10 days may be unpaid, although employees may use paid sick time, vacation time, or other time off provided by the employer or paid sick leave as explained below, to compensate them during this period. The remainder of the leave beyond the initial 10-day period must be paid under the FMLA Expansion Act. This is in stark contrast to leave typically provided under the FMLA, which is unpaid. For all qualified employees, leave must be paid at two-thirds an employee's normal pay. For employees who have a fluctuating schedule, their pay is determined by averaging the number of hours worked during the six months prior to taking leave and paying them two-thirds of their normal rate of pay for those hours. Leave benefits are limited to \$200 per day per employee or \$10,000 in the aggregate per employee.
5. **Job Restoration** — Just like the standard provisions of the FMLA, the FMLA Expansion Act requires employers to return employees after leave to the same or equivalent position. There is an exception to this requirement for employers with less than 25 employees.
6. **Employer Tax Credits** — The Act provides employers with a 100 percent tax credit to offset the wages paid to an employee under the FMLA Expansion Act.

If you have questions about how these changes may affect your organization, please contact J&B Shareholders, [Joseph F. Spitzzeri](#), [Genevieve M. LeFevour](#), [Brian C. Langs](#) or [Christopher J. Carlos](#).