



# Families First Coronavirus Response Act

## Impact on Members and Ministries in the Concordia Plans

8/20/20

What are the items covered by the Families First Coronavirus Response Act that may pertain to my 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 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)
- Pay for such leave shall not exceed \$511 per day for a total of \$5,110

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 \$200 per day and \$2,000 total

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. The Department of Labor has also published a notice that each employer must post in conspicuous places in the workplace regarding this new paid sick leave. For a copy of the notice click [here](#).

## **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 began on April 1, 2020 and will extend through December 31, 2020. The Department of Labor has issue regulations exempting employers with fewer than 50 employees if these leave requirements would jeopardize the viability of the business. Please see below for more information about this exemption.

This part of the bill modifies the FMLA, so many of the rules applicable to the FMLA will apply to this leave. FMLA leave is still 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 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 subject to the limits discussed above. However, the amount of the credit can 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 the bill. The credits apply only to employers with fewer than 500 employees.

To obtain the credit the employer simply retains the amount of the credit from payroll taxes instead of depositing it with the IRS. The payroll taxes available for retention include federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees. If the payroll taxes are not sufficient to cover the cost of the leave, the employer is able to request an accelerated payment from the IRS by filing a Form 7200 with the IRS, which can be found [here](#).

This credit may only be claimed for paid sick and expanded FMLA leave taken during the period beginning April 1 and ending December 31, 2020.

## Small Business Exemption

An employer, including a religious or nonprofit organization, with fewer than 50 employees is exempt from providing emergency paid sick leave and paid family and medical leave “when the imposition of such requirements would jeopardize the viability of the business as an ongoing concern.” A small business may claim this exemption if an authorized officer of the business determines that:

- The provision of paid sick leave or expanded family and medical leave would result in the small business’s expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

**In order to elect the small business exemption, the employer must document that a determination was made based upon the criteria set forth above. However, the employer does not need to send the documentation to the Department of Labor. Instead, it only needs to retain the record in its files.**

We recognize that these leave requirements can create a complex set of issues for our ministries and their ongoing operations. As such, we have posted various fact sheets, Q&A sheets, and other guidance from the Department of Labor and IRS, which address more specific questions you may have. That guidance can be found on the CPS COVID-19 microsite [here](#) under the Families First Coronavirus Response Act section.

If you need assistance drafting any administrative policies or revising handbooks, the HR Services offered by CPS is available to assist you with those forms and other HR services for a low monthly fee. Contact your account manager for more information.

## 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.