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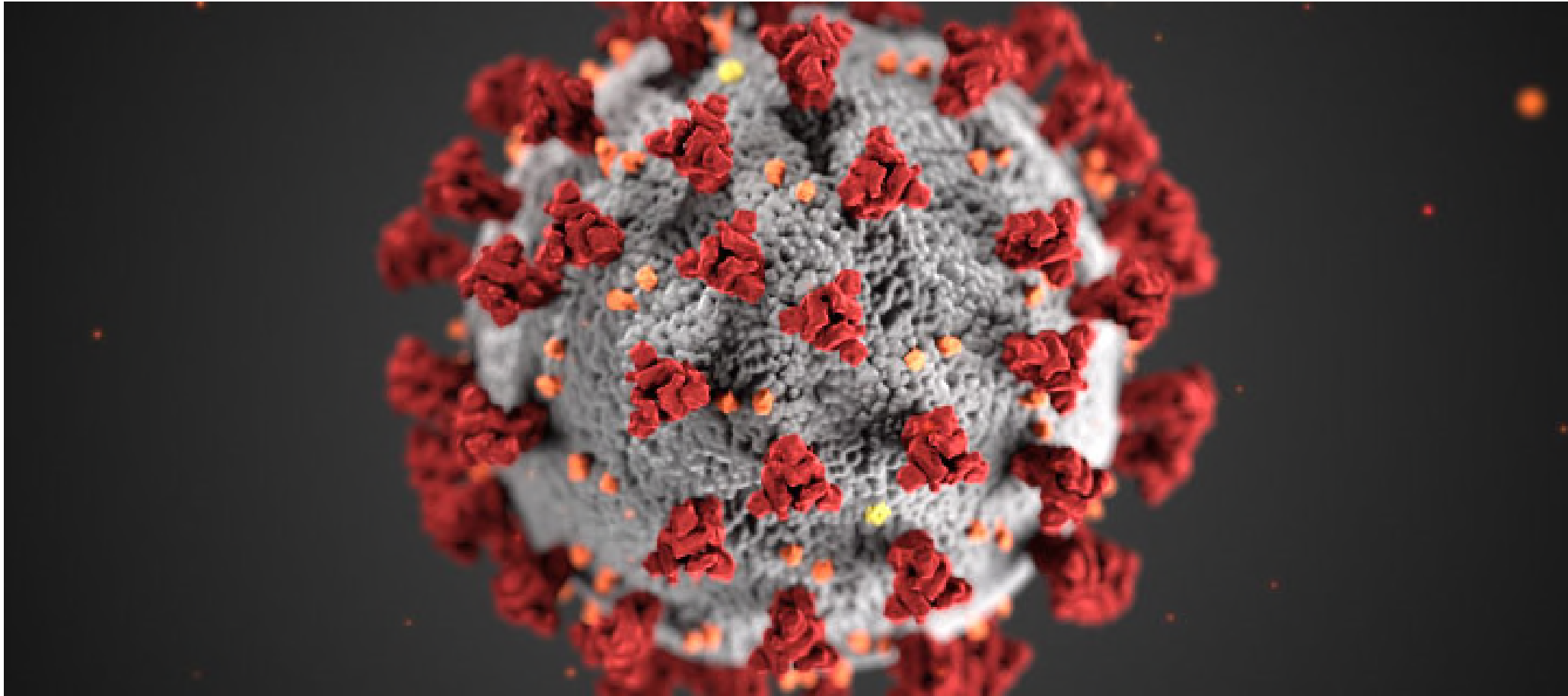
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# **Families First Coronavirus Response Act: Is This What the Doctor Ordered to Save Businesses?**

Steven K. Ludwig  
Brian J. McGinnis



**SARS-CoV-2 ► COVID-19**



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## Quarantine and Isolation



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# Coronavirus Aid, Relief, and Economic Security (CARES) Act

- Currently pending; may modify the Families First Coronavirus Response Act (FFCRA)
- \$1.8 Trillion+
- Smaller employers (<500 employees) eligible for loans up to \$10MM
- Loan forgiveness?
- Tied to layoffs?



# FFCRA - Enhanced Unemployment Compensation Benefits

- Linked to
  - Waiting period waiver
  - Work search requirement waiver for employees directly impacted by COVID-19 on account of an illness in the workplace or direction from a public health official to isolate or self-quarantine
  - No charge to most employer accounts for these COVID-19 related benefits
    - Self-insured employers still charged
- The act also requires each state to improve access to benefits, including ensuring at least two methods of application (phone, internet and in person)



# UC Benefit Eligibility

- Any Loss of Income
  - Reduced hours (most states)
  - Salary reduction (most states)
  - Furlough
  - Layoff
- Requirement for employers to give notice of unemployment benefit availability



# Can Government Handle the UC Surge?

- 2MM+ applications expected this week alone
- Ultimately, 10MM+ applications expected
- Websites crashing, circuits overloaded
- Albeit retroactive, how long until checks are cut?



# Tough Choices to Conserve Cash

- Reduce hours/cut pay
- Reduce salary
  - FLSA compliance issue for exempt employees
- Furlough
- Layoffs



# Reduce Hours and/or Pay

- Eligible for unemployment compensation
- Maintain attachment to employer
- Eligible for FFCRA benefits
- No requirement to pay out accrued pay
- Lose eligibility for health benefits
  - Trigger COBRA



# Furlough

- Eligible for unemployment compensation
- Maintain attachment to employer
  - Easier to start up once “all clear” sounded
- Eligible for FFCRA benefits (maybe)
- No requirement to pay out accrued pay (most states)
- Lose eligibility for health benefits
  - Trigger COBRA
- No WARN exposure if less than 6 months



# Layoffs

- Eligible for unemployment compensation
- Not eligible for FFCRA benefits
- Requirement to pay out accrued pay
- Lose eligibility for health benefits
  - Trigger COBRA
- WARN Act notice may be necessary but unforeseen business circumstances may apply



# Employer Coverage

- **Which employers are required to provide paid sick and family leave?**
  - Private employers with fewer than 500 employees and all governmental employers
  - NOTE: this includes employers who are otherwise exempt from the FMLA who have fewer than 50 employees
- **Are certain employees not covered?**
  - The benefits do not apply to certain federal government employees. Employers also may exclude employees who are health care providers and emergency responders.



# What Type of Paid Sick Leave is Available?

Generally:

- Two weeks (up to 80 hours) of paid sick time at the regular rate of pay if the employee is unable to work or telework because the employee is subject to a government quarantine or isolation order or advice of a health care provider and/or experiencing COVID-19 symptoms and seeking a medical diagnosis

OR

- Two weeks (up to 80 hours) of paid sick time at two-thirds the regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to a government quarantine or isolation order or advice of a health care provider or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19



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# What Type of Paid Family Leave is Available?

- Up to an additional 10 weeks of paid family leave at two-thirds the regular rate of pay, where an employee who has been employed for at least 30 calendar days is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19



# Duration of Leave

## **For how long can an employee take paid sick leave?**

- For leave related to an employee's quarantine or symptoms of COVID-19, a full-time employee is eligible for 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

## **For how long can an employee take paid family leave?**

- For leave related to caring for a child, a full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave) at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.



# Is There a Cap on the Amount of Leave Pay an Employee Can Receive?

- There are daily and aggregate caps.
- For leave related to COVID-19 quarantine or symptoms, sick leave pay is at the regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).
- For leave related to caring for an individual subject to a quarantine order or self-quarantine, sick leave pay is at 2/3 the regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).
- For leave related to child care, leave pay is at 2/3 the regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period).



# Other Employer Considerations

## **Can an employee take other paid leave instead on these new types of leave?**

- An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave, as well as sick or family leave mandated by state and local governments

## **Is there an exemption for small businesses?**

- Employers with fewer than 50 employees may qualify for exemption from the requirement to provide leave on account of school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern; the Department of Labor is expected to publish regulations about this exemption in the future



# Employer Tax Credit

## Can an employer receive reimbursement for payment of FFCRA paid leaves?

- Yes, 100% is refundable as a tax credit with reimbursement as a credit against Social Security and Medicare payroll taxes. The U.S. Treasury may develop a mechanism for more accelerated reimbursement to small businesses.



# Required Notice of Rights

- Employers must conspicuously post a notice of employee rights in a form to be prepared by DOL
- DOL must make a model notice available by this week



# Enforcement

- Employers may not discriminate or retaliate against employees who use paid sick time or paid family leave, or who take other protected activity
- Remedies
  - For failure to provide paid sick time, FLSA remedies apply
  - For failure to provide paid family leave, FMLA remedies apply



# Could All of This Change?

- Yes, even though the law was enacted on March 18, Congress already is considering changes



# Where Can We Get Additional Information?

- Resources:

- U.S. DOL - <https://www.dol.gov/agencies/whd/pandemic>
- OSHA coronavirus guidance: [www.osha.gov/SLTC/covid-19/](http://www.osha.gov/SLTC/covid-19/)
- Congress.gov



**Brian J. McGinnis**

215.299.2042

[bmcginnis@foxrothschild.com](mailto:bmcginnis@foxrothschild.com)

**Steven K. Ludwig**

215.299.2164

[sludwig@foxrothschild.com](mailto:sludwig@foxrothschild.com)



**Fox Rothschild** LLP  
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