



ALABAMA LEAGUE OF MUNICIPALITIES

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MAYOR RONNIE MARKS, ATHENS
President

TO: Mayors, Councilmembers and City Clerks
FROM: Alabama League of Municipalities
RE: Families First Coronavirus Response Act ⁱ
DATE: March 20, 2020

[The Families First Coronavirus Response Act](#) (the "Act") is a federal law that was passed by Congress on March 18, 2020, in response to COVID-19. The Act creates, among other things, Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act. The Act provides payroll tax credits to employers to cover the wages paid to employees under the Act, but state and local governments are not eligible to claim these credits. (see Reimbursement info below). The law goes into effect on April 2, 2020, and the Department of Labor is required to issue guidelines within 15 days to assist employers in calculating the amount of emergency paid sick time.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

The Emergency Family and Medical Leave Expansion Act temporarily amends and expands the Family and Medical Leave Act until December 31, 2020, to provide paid job-protected leave to both a full-time and a part-time employee who has been employed for at least 30 calendar days by an employer, including municipalities.

What is an employee entitled to?

An employee is eligible for paid leave if the employee is unable to work or telework due to a need for leave to care for the employee's child if the child's school or child care provider has been closed, or the child care provider is unavailable, due to COVID-19.

Eligible full-time employees and part-time employees are entitled to 12 weeks of job-protected leave. The first 10 days of the 12-weeks job-protected leave shall be unpaid, but an employee may elect to substitute any accrued paid time off (including vacation, personal, medical or sick leave) offered to the employee by the city for the unpaid leave. Subsequently, a city shall provide paid leave in an amount that is not less than two-thirds of an employee's regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work, up to \$200 per day and \$10,000 in the aggregate. For part-time employees whose schedules vary from week to week such that a city is unable to determine with certainty the number of hours the employee would have worked if the employee had not taken leave, the city shall use a number equal to the average number of hours that the employee was scheduled per day over the six-month period before the employee took leave, including any leave hours that the employee may have previously taken. If the employee did not work over such time-period, the city shall use the average number of hours per day the city, at the time of hire, reasonably expected to normally schedule the employee.

ⁱ The Alabama League of Municipalities would like to acknowledge the Texas Municipal League for some of the information contained in this memo.

Upon expiration of the 12-week leave period, an eligible employee who took leave shall, on return from such leave, be entitled to be: (1) restored to the position the employee held when the leave commenced; or (2) restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. These requirements do not apply to a city that employs less than 25 employees if: (1) the position held by the employee when the leave commenced does not exist due to economic conditions or other changes in the operating conditions of the city that affect employment and are caused by COVID-19; (2) the city took reasonable efforts to restore the employee to an equivalent position with equivalent employment benefits; and (3) if the reasonable efforts fail, the city makes reasonable efforts to contact the employee within a one-year period (from date on which qualifying need for leave ended or the date the 12-weeks leave ends) if an equivalent position becomes available.

What notice is an eligible employee required to provide?

When the need for leave is foreseeable, an eligible employee shall provide the employer notice of leave as is practicable.

Are employees who are emergency providers exempt?

Subject to Department of Labor regulations, a city that employs an emergency responder may elect to not provide such employee with paid family and medical leave.

EMERGENCY PAID SICK LEAVE ACT

Who is eligible for emergency paid sick time?

A city that employs at least one employee is required to provide emergency paid sick leave to each full-time or part-time employee, regardless of how long the employee has been employed by the city, if the employee is unable to work or telework because of one or more of the following reasons, if related to COVID-19:

- The employee is subject to a federal, state, or local quarantine or isolation order;
- The employee has been advised by a health care provider to self-quarantine;
- The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- The employee is caring for an individual who is subject to a federal, state or local quarantine or isolation order or has been advised to self-quarantine;
- The employee is caring for a child of the employee if the child's school or childcare provider has been closed or the childcare provider is unavailable due to COVID-19 precautions; or

The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Labor.

What is an employee entitled to receive?

Eligible full-time employees are entitled to 80 hours of emergency paid sick time at the employee's regular rate of pay (up to \$511 per day and \$5,110 in total) to self-quarantine, seek a diagnosis or preventative care, or receive treatment for COVID-19. Eligible part-time employees are entitled to emergency paid sick leave for the same reasons at their regular rate of pay (up to \$511 per day or \$5,110 in total) for the number of hours equal to the number of hours that such employee works, on average, over a two-week period.

Additionally, full-time employees are entitled to 80 hours of emergency paid sick time at two-thirds the employee's regular rate of pay (up to \$200 per day and \$2,000 in total) to: (1) care for an individual who is subject to a quarantine or isolation order; (2) to care for a child whose school is closed or child care provider is closed or unavailable, or (3) if the person is experience any substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Labor.

Similarly, a part-time employee is entitled to emergency paid sick time for the same reasons at two-thirds of the employee's regular rate of pay (up to \$200 per day and \$2,000 in total) for the number of hours equal to the number of hours that such employee works, on average, over a two-week period. For part-time employees whose schedules vary from week to week, such that a city is unable to determine with certainty the number of hours the employee would have worked if the employee has not taken leave, the city shall use a number equal to the average number of hours that the employee was scheduled per day over the 6-month period before the employee took leave, including any leave hours that the employee may have previously taken. If the employee did not work over such period, the city shall use the average number of hours of day the city reasonably expected would normally be scheduled for the employee at the time of hire.

A city may not require an employee to use other paid leave provided to the employee by the city before the employee can use emergency paid sick time. Additionally, a city cannot require, as a condition of providing emergency paid sick time, that the employee needing leave search for or find a replacement employee to cover the hours during which the employee is using paid sick time. Also, emergency paid sick leave cannot be carried over from one year to the next.

What notice is an employee required to provide?

After the first workday, or portion thereof, an employee receives emergency paid sick time, an employer may require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.

Are emergency responders exempt?

The Department of Labor has the authority to issue regulations to exclude certain emergency responders from the requirement of the law, including by allowing employers of such employees to opt out.

Do you have to post notice?

An employer is required to post and keep posted in conspicuous places on the premises of the employer where notices to employees are customarily posted. A copy of the notice to be posted should be available from the Department of Labor by March 25, 2020.

What other legal obligations apply?

An employer is prohibited from discriminating and/or retaliating against an employee who takes emergency paid sick leave, files a complaint or testifies in any proceeding to enforce the requirements of this law. An employer who violates the provisions of the emergency paid sick leave shall be considered to have failed to pay minimum wage in violation of the Fair Labor Standards Act and is subject to penalties. Additionally, the provisions of the paid sick leave act do not diminish the rights or benefits that an employee is entitled to under any other state or local law, collective bargaining agreement or existing employer policy.

REIMBURSEMENT: PLEASE CONTACT YOUR SENATORS & REPRESENTATIVES

As it stands, the Act implements significant mandates on local governments as employers, but unfortunately, expressly prohibits government employers from receiving the tax credits to offset the costs of providing such leave. Both the National League of Cities (NLC) and the Alabama League of Municipalities are advocating for credits to be given to local governments.

Please click **here** for a copy of NLC's letter to Congressional leadership. You may also consider sending an email or letter to Senators Shelby and Jones, as well as your Member of Congress, urging them to incorporate the requested changes into the next round of COVID-19 relief legislation.

QUESTIONS THAT NEED ANSWERING WITH REGARD TO YOUR EMPLOYEES?

If you have specific questions regarding the implementation of this Act for your employees, please contact the Employment Practices Hotline at 1-800-864-5324. The Employment Practices Hotline is available for Alabama Municipalities who have coverage by AMIC and/or MWCF. For more information on using the hotline please visit: <http://losscontrol.org/employment-hotline.html>