



## **FAMILIES FIRST CORONAVIRUS RESPONSE ACT SUMMARY**

### **Paid FMLA Leave and Paid Sick Leave Provisions**

On March 18, 2020, the U.S. Congress passed the *Families First Coronavirus Response Act*, H.R. 6201 (Act). The Act was signed into law by President Trump later the same day. The Act creates new, temporary requirements related to paid emergency sick leave and Family Medical Leave Act leave that will apply to public school districts in Oklahoma. The following is detailed information regarding those provisions:

#### **Are public school districts in Oklahoma covered by the Act?**

Yes. Both the paid FMLA and paid sick leave provisions apply to private employers with fewer than 500 employees and *certain public employers who employ 1 or more employees*. Public school districts in Oklahoma are considered “public employers” and are covered under the Act, regardless of the number of employees working for the district.

#### **Effective Date**

Both the proposed FMLA changes and the proposed paid sick leave become effective April 2, 2020, and would remain in place until December 31, 2020.

### **Temporary Family Medical Leave Act (FMLA) Changes**

#### **FMLA Expansion for COVID-19**

The Act amends the FMLA to allow an employee who is unable to work (or telework) to take job-protected leave due to a need to care for the employee’s son or daughter (under 18 years of age) if:

1. The child’s elementary or secondary school or place of care has been closed, or
2. The childcare provider is unavailable, due to a “public health emergency” (a “public health emergency” means an emergency with respect to COVID-19 declared by a federal, state, or local authority).



## **Amount of Pay - FMLA**

Under the FMLA provisions, when leave is needed due to a school or day care closure, the school district can provide the first 10 days of leave unpaid, then subsequent absences for this reason must be paid at 2/3 the employee's regular rate of pay. The Act includes a cap on paid FMLA leave of \$200 a day and \$10,000 in aggregate. If the first 10 days are unpaid, an employee may elect to substitute any accrued vacation leave, personal leave, or medical/sick leave for the unpaid leave.

## **Which employees are eligible for these benefits?**

Any employee who has been employed for at least 30 calendar days. The usual FMLA requirements that the employee has been employed for a year and worked for at least 1,250 hours are not applicable to these temporary changes.

## **Who pays for the sick time or leave?**

School districts must pay the costs of the paid FMLA leave. Private employers will receive a tax credit from the federal government for doing so. *However, public employers, which includes school districts, are excluded from the tax credit. Therefore, at this time the law does not provide any mechanism to reimburse school districts for the costs of this additional leave.*

## **What notice must an employee provide for leave?**

The FMLA provisions require employees to provide school districts with "notice of leave as is practicable."

## **Temporary Paid Sick Leave Additions**

### **Federal Paid Sick Leave for COVID-19**

The Act also adds a paid sick leave obligation. Upon the effective date of the act (April 2), school districts in Oklahoma must immediately make available **80 hours of paid sick leave for full-time employees (or the equivalent of the average number of hours over two weeks for part-time employees)** for the following reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).



5. The employee is caring for their son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of the son or daughter is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor.

### **Amount of Pay – Federal Paid Leave**

For the paid sick leave required by the new federal legislation, *the amount of payment depends on the reason for the use of the leave.*

1. Categories 1-3: Employees taking leave for themselves (categories 1-3 listed above) must be paid at least their normal wage or the applicable federal, state, or local minimum wage, whichever is greater. However, the sick leave payment amount for these reasons is capped at \$511 per day and \$5,110 in the aggregate.
2. Categories 4-6: Employees taking time off to care for family members (categories 4-6 listed above) must be paid at two-thirds of the foregoing rate. However, the sick leave payment amount for these reasons is capped at \$200 per day and \$2,000 in the aggregate.

### **Which employees are eligible for these benefits?**

The federal paid sick leave requirements would apply to all school district employees.

### **Is the federal paid sick leave in addition to current leave provided by the employer?**

Yes. School districts must provide the leave amounts listed above in addition to employees' regular accrued leave granted by law or district policy. However, the federal leave may only be used for the COVID-19-related reasons listed above and will only be available through December 31, 2020.

Furthermore, school districts may not require an employee to use other paid leave provided by the district before the employee uses the federal paid sick leave available under the Act.

### **At what rate is the paid sick leave accrued?**

The entire 80 hours of federal paid sick leave is available immediately. There is no accrual rate or period.



### **Who pays for the sick time or leave?**

As with the paid FMLA leave, school districts must pay the costs of the sick leave wages. Private employers will receive a tax credit from the federal government for doing so. *However, public employers, which includes school districts, are excluded from the tax credit. Therefore, at this time the law does not provide any mechanism to reimburse school districts for the costs of this additional leave.*

### **Is carryover required for unused federal paid sick leave that is granted by the new law?**

No. The unused federal paid sick leave does not carry over from one year to the next.

### **What notice must an employee provide for leave?**

After the first workday (or portion thereof) that an employee receives paid sick leave, the school district may require the employee to follow reasonable notice procedures in order to continue receiving the paid sick leave.

### **Can an employee who takes federal paid sick leave be required to find a replacement worker?**

No. School districts may not require an employee to find a replacement worker when the employee takes such leave. In addition, school districts are prohibited from discharging or discriminating against workers for requesting paid sick leave or filing a complaint against the school district related to such emergency leave.

### **Must school districts pay out unused federal paid sick leave provided by the Act if the employee separates from its employment?**

School districts are not required to pay unused paid sick leave provided under the Act if an employee separates from employment.

### **Who do I call if I have questions?**

Please call any member of the legal team at 888.528.3571.