

Families First Coronavirus Response Act

On March 18, the President signed the Families First Coronavirus Response Act to provide for COVID-19-related emergency supplemental appropriations; the Act goes into effect April 1, 2020. The summary below relates to aspects of the legislation that will affect dealers as employers—Emergency Paid Sick Leave Act (“EPSLA”) and Emergency Family and Medical Leave Expansion Act (“EFMLEA”). These provisions do not address an employer’s obligations with respect to termination of employees except that, like with the regular FMLA, an employer may not terminate an employee because the employee utilized the leave provided by these acts. These new laws only apply to employees, not former employees. If an employee is laid off during the period of FMLA leave, the employer must be able to show that the employee would not have been employed at the time of the reinstatement.

EMERGENCY PAID SICK LEAVE

- Applies to employers with less than 500 employees (no 50 employee floor like regular FMLA).
- Any employee is eligible (no minimum days/hours of employment).
- Employers must provide employees with 10 days of paid sick leave at their full rate if the employee is unable to work (or telework) due to any of the following reasons (not to exceed \$511 per day and \$5,100 in the aggregate):
 - The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
 - The employee has been advised by a healthcare provider to self-quarantine.
 - The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- The rate of paid sick leave is reduced 2/3 if the employee is unable to work (or telework) because any of the following apply (not to exceed \$200 per day and \$2000 in the aggregate):
 - The employee must care for an individual who is subject to a quarantine or isolation order or who has been advised to self-quarantine by a healthcare provider.
 - The employee must care for a child under 18 because the child’s school or place of care is unavailable due to COVID-19.
 - The employee is experiencing any other substantially similar conditions specified by HHS in consultation with Treasury and the DOL.
- The required rate of pay must be based on the employee’s regular rate but cannot be less than minimum wage.

- Full time employees are entitled to such pay for 80 hours. Part time employees are entitled to such pay based on the typical number of hours they work in a 2 week period.
- Additional Rules
 - Sick leave does not carry over.
 - Employer may not require employee to find a replacement to cover scheduled hours.
 - Employee may first use this paid sick time under the law before other paid leave (employer may not require the employee use other paid leave first).
 - Employers must post a notice regarding requirements of this law (Secretary of Labor will make a model notice).
- Tax Credits
 - Employers are entitled to a refundable tax credit equal to the amount of qualified paid sick leave per quarter.
 - The credits are applied against employer Social Security taxes, and employers are reimbursed if their costs exceed the taxes owed.

EMERGENCY FAMILY AND MEDICAL LEAVE

- Applies to employers with less than 500 employees (no 50 employee floor like regular FMLA).
- Any employee who worked for employer for 30 days prior to leave and has a qualifying reason is eligible.
- 12 weeks of job protected leave (unpaid for the first 10 days) when “the employee is unable to work (or telework) due to the 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 a public health emergency.”
- First 10 days of EFMLA may be unpaid:
 - Employee may substitute accrued PTO, vacation, or sick leave to cover any portion of first 10 days, but employer may not require such substitution.
 - Emergency paid sick leave may apply.
- After the first 10 days, employer must provide leave to the employee at 2/3 of the employee’s regular rate of pay (not to exceed \$200 per day and \$10,000 in the aggregate).

- Tax Credits:
 - Employers are entitled to a refundable tax credit equal to the amount of the qualified paid EMFLA requirements paid per quarter.
 - The credits are applied against employer Social Security taxes, and employers are reimbursed if their costs exceed the taxes owed.