

*This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.*

### **New Family Leave and Sick Leave Obligations for Employers Enacted – UPDATED 4/1/2020**

On March 18, 2020, the Families First Coronavirus Response Act (the “Act”) was signed into law. The Act will go into effect on April 1, 2020 (15 days after enactment). This law is a financial aid package intended to address the Coronavirus outbreak. The law will remain in effect until December 31, 2020 (unless it is renewed for a longer period of time).

It includes several employment-related provisions that will impact nonprofit organizations along with other employers. The Act applies to all employers with **fewer than 500 employees**, and provides family leave for public health emergencies and paid sick leave. It provides the Department of Labor with the ability to issue regulations to exempt certain employers with fewer than 50 employees from the family leave requirements, but please be aware that no such regulations have, as yet, been issued.

### **Tax Credits for Benefits Paid by Employers/Enhanced Funding for Unemployment**

To the extent that the benefits described below must be paid by an employer, the Act provides tax credits against withheld federal income tax, Social Security, and Medicare taxes it would otherwise be required to deposit with the IRS. For Social Security and Medicare, the employer can retain both the employer and employee share. See below for further details about the tax credits.

It also provides for enhanced funding of state unemployment benefits. [See this link](#) for information about new requirements for employers to file for partial unemployment benefits in Georgia.

### **Family Leave Entitlement**

#### ***Who is eligible for leave?***

The new family leave entitlement is available to all employees who have been employed for 30 calendar days or more.

#### ***When is leave permitted?***

Leave can be taken:

- To care for a child of the employee who is under 18 years old if the school or place of care has been closed, or the childcare provider is unavailable due to the public health emergency.

#### ***How much leave can be taken?***

Eligible employees can take up to twelve (12) weeks of leave.

#### ***Does the employer have to pay for leave?***

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The first ten (10) days of leave can be unpaid (employees may elect to substitute available paid leave but employers cannot require it). After the first two weeks, the remaining leave must be paid by the employer at not less than 2/3 the employee's regular rate based on the average number of hours the employee normally works. The Act limits this pay entitlement to \$200 per day and \$10,000 in the aggregate per employee.

***Does the employer have to reinstate the employee to the same position after the leave?***

The employee is entitled to return to his or her position or an equivalent position after the leave, except that an employer with *fewer than 25 employees* is exempted from this requirement if the position no longer exists due to the public health emergency. Even if the employer has fewer than 25 employees, the employer must make a reasonable attempt to reinstate the employee if an equivalent position becomes available within a year.

**New Emergency Paid Sick Leave**

Covered employers are required immediately to provide all employees, regardless of how long they have been employed, with up to 80 hours of paid sick leave for full-time employees (or the equivalent of two weeks for part-time employees) in addition to any sick leave benefits already provided. This sick leave can be used if the employee is:

1. subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. advised by a health care provider to self-quarantine due to COVID-19 concerns;
3. experiencing COVID-19 symptoms and seeking medical diagnosis;
4. caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
5. caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
6. 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.

The sick leave must be paid at the employee's regular rate for 80 hours for full-time employees, subject to the cap. Employees who work a part-time or irregular schedule are entitled to be paid based on the number of hours the employee worked during an average two-week period. Paid sick leave wages are limited to \$511 per day up to \$5,110 total per employee for their own use and to \$200 per day up to \$2,000 total to care for others and any other substantially similar condition.

If requested by an employee, an employer is required to allow employees to use the 80-hour emergency paid sick leave to cover the first 10 days of unpaid family leave for the public health emergency but cannot require employee to use other paid leave before using this emergency sick leave.

**How Do I Get The Tax Credits?**

The simple answer is you don't submit the tax. What does that mean? When an employer pays its employee's sick or family leave and determines that it is eligible for one of the credits discussed above, it can retain the withheld federal income tax, Social Security, and Medicare taxes it would otherwise be required to deposit with the IRS. For Social Security and Medicare, the employer can retain both the

employer and employee share. The employer may only retain these taxes to the extent used for the sick and child care leave reasons discussed above. Further, if the costs to pay the sick leave or paid family leave exceed the payroll taxes which the employer can keep, employers can request an accelerated payment from the IRS (which currently the IRS estimates will take two weeks to process).

The IRS provides two examples: if an employer pays \$5,000 in sick leave or paid family leave and would regularly deposit \$8,000 of taxes, the employer only needs to deposit \$3,000, and can use the other \$5,000 to cover sick leave. Alternatively, if an employer pays \$10,000 of sick or paid family leave and would normally deposit only \$8,000, the employer can keep the entire \$8,000 to cover the sick or paid family leave expenses and request accelerated payment for the other \$2,000.

At this time, we are awaiting further guidance from the IRS and DOL on the specific way to document the paid family and sick leave payments to employees and credit to the employer of nonpayment of withholdings. The Act is effective beginning April 1, 2020, so if the employer submits its withholding on a semi-weekly basis, the first withholding of payroll tax credits under the Families First Act won't happen before mid-April and the applicable Form 941 won't be due until July 31, 2020, so the IRS will hopefully have guidance before that time. In the meantime, the employer should keep meticulous records of any sick leave payment or paid leave.

### **What To Do Now**

Employers with fewer than 500 employees have until April 1st to determine how they will comply with the Act and start implementing it. They will also need to provide notice to employees of these new requirements through postings and policies. The Department of Labor has issued postings for employers to use at this [link](#).

Please start to consider how you are going to implement these requirements: Employers will need to determine who in their workforce is eligible for leave; how it is going to be tracked; how records will be created; how records will be retained; and how much will be paid to employees. You can find additional information about the Act in this [link](#) to our Frequently Asked Questions for Employers.

With regard to record retention, please be aware that any medical or health-related records should be kept in separate confidential medical files for employees and not in their personnel files, and all records related to leave should be maintained confidentially. See this article for additional information about best practices and personnel files: <https://www.pbpatl.org/nonprofit-legal-alerts/best-practicesmaintaining-personnel-files/>.

As additional resources or guidance becomes available, PBPA will share it with clients. Please contact your PBPA attorney if you have questions about this new law or need assistance.