FAMILIES FIRST CORONAVIRUS RESPONSE ACT:
WHAT CHURCHES NEED TO KNOW

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Applicability of the FFCRA may vary based on your organization’s circumstances. This webinar is not legal advice, and no attorney-client relationship is created by attending or viewing the presentation. Organizations should consult their attorney if they have questions about how the provisions of the FFCRA apply to them.
Families First Coronavirus Response Act

What does it do?

• Requires paid leave for parents to care for children who are out of school/daycare due to COVID-19
• Requires paid sick leave for employees due to specific issues related to COVID-19
• Provides a refundable payroll tax credit to employer for costs of paying leave
Families First Coronavirus Response Act

When is it effective?
• For leave taken between April 1, 2020 and December 31, 2020
• The law expires December 31, 2020
The Act is not retroactive.
Families First Coronavirus Response Act

Who does it apply to?

- Employers engaged in commerce or in any industry or activity affecting commerce AND
- Having fewer than 500 employees

If a church has fewer than 500 employees and it is affecting commerce, the leave provisions will apply to the church.
Families First Coronavirus Response Act

Do these laws apply if I already give my employees paid time off?

• YES. These leave laws are on top of what an employer already provides, and an employer cannot force an employee to use employer-provided leave first

• An employer cannot reduce the employee’s paid time off for taking leave under these laws

• Also be aware of state and local paid leave laws
Engaged in or Affecting Commerce

Is my church engaged in/affecting commerce?
• “Commerce” includes both for-profit and not-for-profit operations, and can include church operations
• Interpreted very broadly by courts
• Depends on size of church and nature of operations
Engaged in or Affecting Commerce

Some factors indicating that a church may be affecting commerce:

• Operation of school or any business
• Operation of a camp
• Sale of products to out-of-state persons
• Television, radio, or web broadcasting
• Employees travel out of state
• Church has members out of state
• Use of mail/wires for out-of-state-communications
FMLA: Paid Public Health Emergency Leave

Who is covered under FMLA paid leave?

• All employees who have been employed 30 calendar days or longer

• Does not matter whether employee is FT, PT, exempt, non-exempt
FMLA: Paid Public Health Emergency Leave

Why can an employee take Public Health Emergency Leave?

• Employee is unable to work, including unable to work remotely, because the employee’s child’s school or daycare is closed due to a public health emergency with respect to COVID-19
FMLA: Paid Public Health Emergency Leave

How much leave can an employee take?

- Up to twelve weeks— but the first 10 days are unpaid, unless employee elects to be covered by employer-provided time off (vacation, personal days, etc.) or FFCRA Paid Sick Leave
- Employee required to give notice “as is practicable”
FMLA: Paid Public Health Emergency Leave

How much pay are employees entitled to?
• After the first 10 days, 2/3 of their regular pay, up to $200 per day; cap of $10,000 in the aggregate

What about part-timers?
• Part time employees are entitled to leave for the average number of work hours/day in a two-week period
• If schedule varies, use a six-month average of work hours/day
FMLA: Paid Public Health Emergency Leave

Are there exceptions from complying with this law for any employer?

• YES—if ability of the employer to continue as a business is jeopardized, then the employer can apply for exemption

• Certain provisions also may not apply to employers with fewer than 50 employees

Employers are required to restore employees to a like position after leave; employers with fewer than 25 employees may be exempt.
Paid Sick Leave

Who is covered under the Paid Sick Leave provisions?
• All employees, regardless of employment duration

How much leave can an employee take?
• For full-time employees, up to 80 hours
• For part-time employees, average number of work hours in a two-week period
• Employer can require employee to follow reasonable notice procedures after taking first day of leave
Paid Sick Leave

Paid sick leave is only for the following 6 reasons:

1. Employee has been directed or ordered to quarantine or isolate related to COVID-19 by the federal, state, or local authorities
2. Employee has been advised by a healthcare provider to self-quarantine because of COVID-19
3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis
Paid Sick Leave

4. Employee is caring for an individual that is subject to a directive or order as described in #1 and #2.

5. Employee is caring for their child because the child’s school or daycare has been closed because of COVID-19.

6. Employee is experiencing any other substantially similar condition (to be specified by the Secretary of Health and Human Services).
Paid Sick Leave

How much pay are employees entitled to?

• For reasons 1-3, relating to employee’s health, regular pay up to $511/day; capped at $5110 in the aggregate

• For reasons 4-6, not relating to employee’s health, 2/3 pay up to $200/day; capped at $2000 in the aggregate
Paid Sick Leave

Are there exceptions from complying with this law for any covered employer?

• No— unlike the FMLA paid Public Health Emergency Leave, all employers must comply
How can my church afford to give paid leave?

• Fully refundable payroll tax credit “qualified” sick leave and family leave “wages” paid for leave

• Can include dollars paid for group health plan while employee is on leave

• If amount of leave paid exceeds what employer pays in payroll taxes, IRS sends you a check
What are “qualified sick leave and family leave wages?”

- The law defines wages by referring to the Internal Revenue Code
- For lay employees, it is clear
Ministers and the Payroll Tax Credit

But can our church take a payroll tax credit for leave costs paid to ministers?

- “Qualified” sick and family leave wages excludes ministerial employment
- Self-employment tax credit likely an option
Payroll Tax Credit

How does that work *exactly*?

- Churches pay the employer’s share of payroll taxes—Social Security and Medicare taxes—for their lay employees, and withhold employee portion
- Churches withhold federal income tax for lay and clergy employees (usually)
- Deposited with IRS and quarterly payroll tax returns filed
Payroll Tax Credit

• The Medicare, Social Security, and withheld federal income taxes may be retained by church that is paying employees on leave under the Act
• Amount retained cannot exceed statutory caps, plus cost of group health plan coverage
• If church pays more in leave than it pays/withholds in payroll taxes, the church files a claim with the IRS and receives a payment
Payroll Tax Credit Example

- Church administrator makes $300/day and goes on FMLA leave. Admin elects to be covered by Paid Sick Leave for the first 10 days, and so is paid at $200/day for 12 weeks.
- At the end of every quarter, church normally has deposited $10,000 in total Medicare, SS, and withheld federal income taxes.
- Church spends $12,000 on leave costs for Admin, plus $800 on group health plan coverage for Admin.
- Church retains entire deposit and files claim for $2800 for group health plan coverage for Admin.
Frequently Asked Questions

- Can we pay our employees more than the 2/3 required by the Act?
- Do we need to notify our employees of this new law?
- Is there an anti-retaliation provision?
- What about recordkeeping?