

Families First Coronavirus Response Act

Congress passed and the President signed the Families First Coronavirus Response Act ("FFCRA") which will significantly impact most private employers with fewer than five hundred (500) employees. The laws outlined below regarding employer leave and sick pay obligations are in effect from April 2, 2020, to December 31, 2020.

- **EXPANSION OF FMLA LEAVE**

The Emergency Family and Medical Leave Expansion Act temporarily amends and expands the Family and Medical Leave Act. It provides eligible employees of employers with fewer than five hundred (500) employees (previously it was at least fifty (50) employees), who have been on the job for at least thirty (30) days (previously it was 12 months and 1250 hours), with the right to take up to twelve (12) weeks of FMLA job-protected leave if the employee is unable to work (or telework) due to a need for leave to:

Care for a child of an employee if the child's school or place of care has been closed, or the child care provider is unavailable, due to COVID-19.

- The Secretary of Labor may, however, issue regulations to exempt small businesses with fewer than 50 employees if the imposition of the requirements would jeopardize the viability of the business as a going concern. Exemptions also apply for health care providers and emergency responders.
- The first ten (10) days of the expanded leave may be unpaid, but employees may substitute other forms of paid leave (e.g., vacation or sick leave) at their option, not the employer's option.
- After the first ten (10) days of leave the employer must pay full-time or part-time employees at:
 - 2/3rds the regular rate of pay for the number of hours the employee would otherwise be scheduled to work; or \$200 per day, whichever is less, up to a maximum aggregate benefit of \$10,000 per employee.
- Job Restoration. FMLA job restoration obligations do not apply to employers with fewer than 25 employees if the employee's position does not exist due to economic conditions or changes in the employer's operating conditions caused by the public health emergency during the period of leave. These employers, however, must make "reasonable efforts" to restore the employee to an equivalent position or, if the employer is not able to do so, must make reasonable efforts to contact the employee for one (1) year if an equivalent position becomes available.

- The regular FMLA provisions continue to apply to certain employers with at least 50 employees if an employee is taking care of a family member who has contracted COVID-19 or the employee has contracted COVID-19.

- **THE EMERGENCY PAID SICK LEAVE ACT**

The FFCRA also requires employers to pay paid sick leave to employees for two (2) weeks in certain circumstances. This portion of the law applies to most government employees and private companies with fewer than 500 employees.

- Under the new law, an employee is eligible to receive paid sick leave if an employee is unable to work (or telework) due to a need for leave because:
 - *(a) the employee is subject to a quarantine or isolation order, has been advised to self-quarantine or is experiencing symptoms of COVID-19 and seeking a diagnosis; OR*
 - *(b) the employee is caring for an individual who is subject to a quarantine order or who is advised to self-quarantine or the employee is caring for a child whose school or day care has closed; OR*
 - *(c) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.*

- Full-time employees are eligible for 80 hours of leave.

- Part-time employees are eligible for the average number of hours the employee works over a 2-week period.

- Employers cannot require employees to use other forms of paid leave before using paid sick time provided by this Act.

- If leave is taken because the employee is subject to a quarantine or isolation order, has been advised to self-quarantine or is experiencing symptoms of COVID-19 and seeking a diagnosis, then the employee must be paid the lesser of: (a) the employee's regular rate of pay for the number of hours the employee would otherwise normally be scheduled to work; or (b) \$511 per day, up to a maximum aggregate benefit of \$5,110 of paid leave; or

- If leave is taken because the employee is caring for an individual who is subject to a quarantine order or who is advised to self-quarantine, the employee is caring for a child whose school or day care has closed, or the employee has a specified "substantially similar condition," the employee must be paid the lesser of: (a) 2/3rds of the employee's regular rate of pay for the number of hours the employee would otherwise normally be scheduled to work; or (b) \$200 per day, up to a maximum aggregate benefit of \$2,000 of paid leave.

- Employers are not required to carry over or pay out unused leave provided under this Act upon termination. Employers cannot require employees who need leave to find a replacement employee to cover their shift.
- Employers must post a notice in the workplace regarding these leave benefits, a sample of which is expected to be promulgated by the Secretary of Labor within 7 days.
- The law includes anti-retaliation/anti-discrimination provisions. Violations are considered a failure to pay minimum wage under the FLSA, for which an employer may be liable in the amount of the unpaid wages, an equal amount in liquidated damages, and attorney's fees and costs.

Under these laws, companies must front the costs of paid sick or emergency leave, but will later be eligible for certain tax credits or tax refunds from the government to help offset the costs.

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