



## COVID-19 Update

March 2020

### New Employee Leave Benefits Enacted by Families First Coronavirus Response Act

President Trump has signed the Families First Coronavirus Response Act (Act), which includes provisions for emergency paid sick leave and emergency paid family and medical leave for eligible employees who work for employers with 500 or fewer employees. The Senate passed the House version of the bill unchanged, after the House amended its original legislation to scale back the paid leave provisions.

The Act, which will become effective on April 2, will remain in effect through December 31, 2020.

#### Emergency Paid Sick Leave

The Act's paid sick leave component provides for up to 80 hours of paid sick leave if the employee:

- (1) is subject to a federal, state or local quarantine or isolation order;
- (2) has been advised by a health care provider to self-quarantine;
- (3) is experiencing symptoms of COVID-19 and is seeking a diagnosis;
- (4) is caring for an individual covered by (1) or (2) above;
- (5) is caring for a son or daughter whose school or place of care has been closed or whose child care provider is unavailable due to COVID-19 precautions; or
- (6) is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Full-time employees are entitled to 80 hours of paid sick leave paid at their regular rate of pay, capped at \$511 per day; part-time employees are also entitled to leave based

upon their average hours worked in a two-week period. If employees are taking the leave to care for family members, they are entitled to only two-thirds of their regular rate of pay, capped at \$200 per day.

It is important to note that *all* employees are *immediately eligible* for this leave, regardless of how long they have been employed. The paid sick leave does not carry over from one year to the next.

As with the original House version of the bill, sick leave under the Act is in addition to any other paid leave available to employees, and they may choose to use this emergency paid sick leave before using any other types of leave.

Employers may require notice of the use of leave after the first workday (or portion thereof) that an employee receives paid sick time under the Act.

#### Emergency Family and Medical Leave

The original House bill expanded Family and Medical Leave Act (FMLA) benefits to employees falling within a number of categories. The amended bill that was presented to and passed by the Senate has been scaled back significantly.

FMLA provisions have been expanded to include only employees who must care for a minor child because of a COVID-19-related school closure or childcare provider loss (Public Health Emergency Leave), if the employee is unable to telework. Of course, employees who become ill with COVID-19 or are caring for family members who have COVID-19 may still be covered by the FMLA's original "serious health condition" provision.

Under Public Health Emergency Leave, the first 10 days of leave are unpaid. For the final 10 weeks, employees receive up to two-thirds of their pay, with payments capped at \$200 per day. The leave is available to employees who have worked for their employers for at least 30 days at the time of their leave request. Employees may choose (at their sole discretion) to apply any current paid time off to the unpaid weeks, but employers may not require employees to do so, regardless of existing company policy.

The Act includes a provision requiring all employers with 25 or more employees to return a covered employee to their same job or an equivalent position. Employers with fewer than 25 employees may be subject to an exemption if the position no longer exists due to economic conditions or changes in operational conditions caused by the public health emergency during the leave period. The Department of Labor is also authorized to issue regulations on exemptions for employers with fewer than 50 employees, first responders and health care providers.

Small businesses (with fewer than 50 employees) may be eligible to apply for hardship waivers from the leave provisions affecting workers whose children's schools have closed. Additionally, the federal government will give companies refundable tax credits on a quarterly basis. Businesses concerned about their cash flow may be able to receive advance funds.

## FOR MORE INFORMATION

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## Additional Resources

We have assembled a firmwide multidisciplinary task force to address clients' business and legal concerns and needs related to the COVID-19 pandemic. Please see our [COVID-19 Task Force](#) page for additional information and resources.

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