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Families First Coronavirus Response Act

In a time when multiple new regulations and guidance from the Federal Government, as well as Executive Orders from states and counties abound, one new piece of federal legislation – the Families First Coronavirus Response Act (the “Act”) – deserves attention from every industry.

Signed into law on March 18, 2020, the Act – which applies to all employers with less than 500 employees – becomes effective on April 1st and expires December 31st of this year. The Department of Labor may exempt businesses with fewer than 50 employees if compliance would jeopardize the ongoing viability of the business.

This alert focuses on specific provisions of the Act related to Emergency Paid Leave and the Emergency Family and Medical Leave Act Expansion, including which employees are covered by the Act and the benefits employers must provide.

Which employees are eligible for Emergency Paid Leave?

All employees of covered employers are eligible for Emergency Paid Leave, regardless of their length of tenure, but only if the leave is due to one of the following reasons:

1. the employee is subject to a federal, state, or local isolation or quarantine order;
2. the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 (self-imposed quarantine without medical advice does not qualify under the Act);
3. the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. the employee is caring for an individual (not limited to family members at this time) who is either subject to a federal, state, or local quarantine or isolation due to COVID-19 or has been advised to self-quarantine due to concerns related to COVID-19;
5. the employee is caring for the employee’s child whose school has been closed or place of care is unavailable due to COVID-19 precautions; or
6. the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor. The precise meaning of this sixth reason will be clarified by the Secretary of Health and Human Services.

What Emergency Paid Leave benefits must employers provide?

The Emergency Paid Leave portion of the Act allows for up to 80 hours of paid leave for full-time employees. “Full-time” is not currently defined in the Act, but the Department of Labor is mandated with providing further guidance on the issue prior to the law taking effect on April 1, 2020. Employers should prepare for “full-time” to include any employee who works, on average, at least 30 hours per week.



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Part-time employees are entitled to the equivalent of the average number of hours they work during a two-week period.

If the leave is for qualifying reasons one, two, or three above, the employee is entitled to his or her regular rate of pay, up to \$511 per day and \$5,110 in total. If the leave is for reasons four, five, or six, above, the employee is entitled to no less than two-thirds of the employee's regular rate of pay, up to \$200 per day and \$2,000 total. Eligible employees may use paid sick time or PTO to receive their full pay for any qualifying reason above, but employers cannot require employees to first use their paid sick time or PTO before using paid sick time under the Act.

Which employees are covered by the Emergency Family and Medical Leave Act Expansion?

Previously, the Family and Medical Leave Act ("FMLA") applied to employers with 50 or more employees and provided benefits such as unpaid leave to certain employees who have been employed by the employer for the past 12 months and who have worked at least 1,250 hours in the past 12 months.

The Act has expanded the FMLA so that it now applies to all employers with less than 500 employees, and it applies to all employees who have been employed for at least 30 days. The Act has also added a new leave entitlement for employees unable to work (or telework/work from home) because of a need to care for children if schools or other childcare have been closed due to a declared emergency by a federal, state, or local governmental authority. Again, the Department of Labor may exempt certain businesses with less than 50 employees if compliance would jeopardize the ongoing viability of the business.

What benefits must employers provide?

The Emergency FMLA Expansion provides eligible employees with up to 12 weeks of leave. The first 10 working days of the leave is unpaid, but the employee may choose to substitute accrued vacation leave, personal leave, sick leave, or any other form of paid time off. Importantly, the employer cannot require the employee to use any such leave.

Employers must pay covered employees for the remaining 10 weeks leave at a rate no less than two-thirds of the employee's regular pay rate. The amount should reflect the number of hours the employee would otherwise be normally scheduled to work. The payments, however, are capped at \$200 per day and \$10,000 in total.

Additional Guidance

a. Exemption from Employee Restoration Requirement

Employers with fewer than 25 employees that provide leave under the Act are exempt from the FMLA's job restoration requirements if the following conditions are met: (i) the employee's job position does not exist due to economic conditions caused by the coronavirus; (ii) the employer makes reasonable efforts to restore the employee to an equivalent position; and (iii) an equivalent position does not become available in the following year.



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b. Tax Relief for Employers

The Act allows employers refundable tax credits against their employer portion of Social Security taxes for 100% of the qualified payments made in accordance with the Act. The amount of the credit may be increased by the employer's health plan expenses that are allocable to leave wages (e.g., employer-paid premiums to continue group medical coverage for eligible employees).

Other Considerations

a. Employee Communications

Employers must post a notice that advises employees of their rights under the Act. The Department of Labor is required to create a notice by March 26, 2020. The notice must be posted conspicuously in places where notices to employees are customarily posted.

b. Employee Reporting

Employers may require employees to follow reasonable notice procedures to continue receiving such paid leave time after the first workday an employee receives paid time under the Act. Employers, therefore, may not require employees to provide advance notice prior to the first workday on which the employee takes paid sick leave under the Act.

Final Notes

Like most employment regulations, the Act contains anti-retaliation provisions that prohibit employers from retaliating for employees taking leave under the Act or because the employee filed a complaint under the Act.

Federal, state and local governments will likely pass additional legislation that could add more requirements and benefits. We will keep you abreast of these new laws as they develop.

The information provided in this Client Alert does not, nor is it intended to, constitute legal advice. Readers should not take or refrain from taking any action based on any information contained in this Client Alert without first seeking legal advice.

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