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Families First Coronavirus Response Act: Employer Obligations

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On March 18, 2020, President Trump signed into law the **Families First Coronavirus Response Act** ("Act") which will provide some relief to certain American workers and employers in the wake of the coronavirus pandemic. There are two sections of the Act which require covered employers to provide eligible employees with paid leave for reasons related to the pandemic: the **Emergency Paid Sick Leave Act** and the **Emergency Family and Medical Leave Expansion Act**.

Following is a summary; guidance from the U.S. Department of Labor can be found here*(updated 3/30/2020)*.

Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act requires covered employers to provide eligible employees with up to 80 hours of paid leave.

Effective date: Effective April 1, 2020. The law expires December 31, 2020.

Covered Employers:

- Private employers with fewer than 500 employees
- All public agencies (federal/state governments, political subdivisions, schools)

Eligible Employees:

Any employee of a covered employer who is unable to work or telework because:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine because of COVID-19;
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. The employee is caring for an individual subject or advised to quarantine or isolation;
5. The employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions; or
6. The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Paid Leave Requirement:

Employees are entitled to the following:

- Full-time employees who are eligible for the leave are entitled to 80 hours of paid leave at their regular rate of pay. However, when caring for a family member (for reasons 4, 5, and 6 above), sick leave is paid at two-thirds the employee's regular rate.
- Part-time employees who are eligible for the leave are entitled to paid leave for the number of hours that the employee works, on average, over a 2-week period. However, when caring for a family member (for reasons 4, 5, and 6 above), sick leave is paid at two-thirds the employee's regular rate.

The law limits paid leave to $511 per day ($5,110 in total) for individuals taking leave for reasons 1, 2, and 3 above. For individuals taking leave for reasons 4, 5, and 6 above, the paid leave is limited to $200 per day ($2,000 in total).

The employer cannot require the employee to use accrued leave under an employer policy first.

Tax Credits:

The law offers to reimburse employers who provide the leave under this law, as follows:

- A refundable tax credit for employers equal to 100 percent of qualified paid sick leave wages required to be paid by the Emergency Paid Sick Leave Act that are paid by an employer for each calendar quarter.

Emergency Family and Medical Leave Expansion Act

The Emergency Family and Medical Leave Expansion Act expands the FMLA by requiring covered employers to provide eligible employees with 10 weeks of two-thirds paid leave.

Effective date: Effective April 1, 2020. The law expires December 31, 2020.

Covered Employers:

- Employers with fewer than 500 employees
- All public agencies (federal/state governments, political subdivisions, schools)

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as an ongoing concern.

Eligible Employee:

Any employee of a covered employer who has been employed for 30 calendar days and who is unable to work or telework because the employee has to care for a minor child (under 18 years old) whose school or child care provider has been closed or is unavailable due to a public health emergency.

The law allows employers to exclude employees who are health care providers or emergency responders from this emergency FMLA entitlement.

Leave Details and Interplay with Emergency Paid Sick Leave Act:

Eligible employees are entitled to take up to 12 weeks of leave under this law. The first two weeks of leave (10 work days) are unpaid under the Emergency Family and Medical Leave Expansion Act. Following the first two weeks, eligible employees are entitled to up to ten (10) additional weeks of partial paid leave (two-thirds of regular pay). While the first two weeks are unpaid under the Emergency Family and Medical Leave Expansion Act, an eligible employee will likely also be entitled to partial paid leave (two-thirds of regular pay) during this period under the Emergency Paid Sick Leave Act.

The law limits paid leave to $200 per day ($10,000 in total) for individuals taking leave. (When combined with the partial paid leave under the Emergency Paid Sick Leave Act, the limit on the total increases to $12,000).

Restoration to Position after Leave Ends:

Emergency FMLA leave is job-protected, meaning the employer must restore an employee to the same or equivalent position upon their return to work. However, the new law includes an exception to this requirement for employers with fewer than 25 employees if the employee's position no longer exists following leave due to operational changes occasioned by a public health emergency (e.g. reduction in business due to pandemic). If the under-25 employee exception is utilized, the employer must make reasonable efforts to contact displaced employees for up to one year after they are displaced if an equivalent position becomes available.

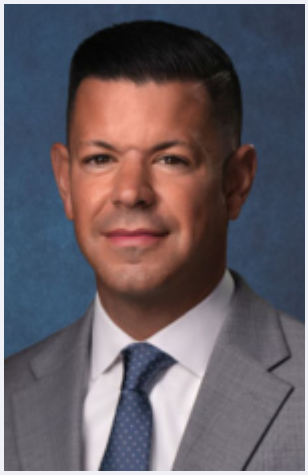
Tax Credits:

The law offers to reimburse employers who provide the leave under this law, as follows: A refundable tax credit for employers equal to 100 percent of qualified family leave wages required to be paid by the Emergency Family and Medical Leave Expansion Act that are paid by an employer for each calendar quarter.

For more information or any questions, please contact a member of Knox Law's Labor & Employment Department.

DISCLAIMER: Please note that the situation surrounding the COVID-19 pandemic is evolving and that the subject matter discussed in these publications may change on a daily basis.

More resources and information regarding COVID-19



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