



News & Types: Employment, Labor & Benefits Update

President Signs Coronavirus Relief Bill

3/19/2020

By: Frank J. Del Barto, Alan M. Kaplan, Nancy E. Sasamoto

Practices: Employment, Labor & Benefits

Executive Summary

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (H.R. 6201)

President Trump signed into law the Families First Coronavirus Response, H.R. 6201, (the “Families First Act” or the “Act”), which the Senate passed yesterday by a vote of 90 to 2. In addition to establishing requirements for free coronavirus diagnostic testing, the Act contains two main provisions that directly impact employers and their employees.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (“EFMLEA”), EFFECTIVE APRIL 2, 2020 THROUGH DECEMBER 31, 2020

The EFMLEA expands the protections of the Family and Medical Leave Act (“FMLA”) by allowing certain employees to take FMLA leave for reasons related to COVID-19, referred to as Public Health Emergency Leave. The EFMLEA applies to employers *with less than 500 employees*. To be eligible, the employee must have worked for the employer for at least 30 days.

The EFMLEA defines a qualifying need related to a public health emergency much narrower than earlier versions of H.R. 6201. It is limited to the employee who is unable to work (or telework) and needs a leave to care for a child under age 18, if the child’s school or place of care has been closed, or the child-care provider is unavailable, due to a public health emergency.

The first 10 days of EFMLEA leave can be unpaid. However, the employee may be eligible for Emergency Paid Sick Leave, which is discussed below. After the first 10 days, employers must pay an amount that is not less than two-thirds of the employee’s usual pay for the number of hours the employee would otherwise be normally scheduled to work. The paid leave is capped at \$200 per day or \$10,000 in the aggregate per employee. After the maximum is reached, the remainder of the 12 weeks of leave is unpaid.

Generally, employers must comply with the FMLA’s reinstatement provisions. However, employers with fewer than 25 employees are not required to reinstate the employee, if the position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer that (a) affect employment and (b) are caused by a public health crisis during the period of leave. The employer must make reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay and other terms and conditions of employment.

The effective date is April 2, 2020, 15 days after the enactment of the Act. The requirements will continue through December 31, 2020. The Department of Labor will be publishing a poster for use by covered employers.

EMERGENCY PAID SICK LEAVE ACT, EFFECTIVE APRIL 2, 2020 THROUGH DECEMBER 31, 2020

All employers with less than 500 employees must provide paid sick time for any of the following uses:

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 due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2);
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter 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 Secretary of the Treasury and the Secretary of Labor.

The Secretary of Labor has the authority to exempt small businesses with fewer than 50 employees from these requirements, where such requirements would jeopardize the viability of the business as a going concern. However, no guidance has been provided yet regarding how to obtain such an exemption.

Full-time employees are entitled to 80 hours of paid sick leave. Part-time employees are entitled to a number of hours equal to the number of hours that such employee works, on average, over a 2-week period. The amount of sick pay is capped at \$511 per day and \$5,110 in the aggregate if the employee is subject to a quarantine order, cannot work due to self-quarantine or is experiencing symptoms or seeking a diagnosis as described in paragraph 1, 2 or 3 above. The maximum is \$200 per day and \$2,000 in the aggregate for employees caring for an individual or child experiencing any other substantially similar condition as described in paragraph 4, 5 or 6 above.

The Act provides that any employer with an existing paid leave policy shall provide the paid sick time under the Act, in addition to such paid leave, and cannot require an employee to use other paid leave provided by the employer to the employee, before the employee uses the Emergency Paid Sick Leave. Employers are prohibited from changing their sick leave policies to decrease the amounts provided to employees.

Subject to certain limitations, employers will be allowed a credit against the tax imposed by section 3111(a) of the Internal Revenue Code of 1986 (old-age, survivors and disability insurance) and certain employment taxes for each calendar quarter. The credit will consist of an amount equal to 100 percent of the qualified sick leave wages paid by such employer with respect to such calendar quarter, subject to the limitations stated in the Act.

The tax credit may be increased by certain qualified health plan expenses that are allocable to the wages paid as emergency sick leave pay.

WHAT SHOULD COVERED EMPLOYERS DO?

Each employer must notify employees of the availability of FMLA leave and Emergency Paid Sick Leave by posting in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor, of the requirements described in this Act, as well as updating or supplementing their employment policies to incorporate these requirements.

It is unlawful for an employer to interfere with the exercise of rights under the Families First Act or to discharge or in any other manner discriminate against (including retaliating against) any individual, including a job applicant, for opposing any practice made unlawful by this Act.

Please contact your relationship attorney or a member of the Employment Group with any questions regarding the Families First Act, including questions related to compliance with the Americans With Disabilities Act, OSHA, the Fair Labor Standards Act, wage and hour compliance, sick leave, working from home policies, immigration, delayed litigation, and any business contract issues, such as the application of force majeure provisions.