

COVID-19 Update: Guidance on Paid Leave and the Families First Coronavirus Response Act

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On Wednesday, March 18, 2020, President Trump signed the Families First Coronavirus Response Act (“FFCRA”). The law will go into effect within 15 days and will remain in effect until December 31, 2020. Among other things, the law includes an emergency expansion of family and medical leave and paid sick leave. All employers need to be aware of these legal changes.

Expansion of the Family and Medical Leave Act (“FMLA”)

Under this provision, all employers with 500 or fewer employees must provide paid leave to any employees who are unable to work due to a need to care for a son or daughter (under 18 years of age) where the child’s school or childcare provider has been closed or is unavailable due to the public health emergency. To be eligible, the employee must have been employed for at least 30 calendar days.

The paid leave should be at least 2/3 of the employee’s regular rate of pay (or the applicable minimum wage, if greater) multiplied by the number of hours the employee would otherwise normally work. The total amount of paid leave under this provision is capped at \$200/day or \$10,000 total. The first 10 days of leave under this provision may consist of unpaid leave.

If the employer has fewer than 25 employees and the public health emergency causes the employer to eliminate the position or restructure operating conditions, the employee is not guaranteed to be restored to the position if the employee takes leave pursuant to this portion of the FFCRA.

Emergency Paid Sick Leave

In addition to the FMLA expansion, the FFCRA includes a provision requiring employers with fewer than 500 employees to provide paid sick leave coverage if the employee is unable to work because:

- The employee is subject to a Federal, State or local quarantine or has been advised by a health care provider to self-quarantine due to COVID-19 concerns or the employee is caring for an individual who is subject to quarantine;
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- The employee is caring for a son or daughter if the school or place of care for the child has been closed or is unavailable due to COVID-19; or
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Department of Treasury and Secretary of Labor.

Under this provision, full-time employees are entitled to eighty (80) hours of paid sick time. Part-time employees are entitled to paid sick time equivalent to the number of hours the employee works, on average, over a two-week period. The employer may not require the employee to use other paid leave before using the paid leave under this provision.

The rate of pay for emergency paid leave under this provision varies depending on whether the leave is related to the employee's own condition or whether the employee is caring for another. For the employee's own condition, pay is calculated based on the employee's regular rate (or applicable minimum wage if it is greater), but is limited to \$511.00 per day and \$5,110.00 total. However, if the leave is related to the employee acting as caregiver for another, pay is based on 2/3 of the employee's regular rate (or applicable minimum wage if that is greater) and is limited to \$200.00 per day and \$2,000.00 total.

Within 7 days, employers should expect the Secretary of Labor to provide a model notice, which shall be a required posting for employers.

How do employer's pay for this?

The FCCRA provides that employers who are required to pay for leave under either of the provisions discussed above will be eligible for a series of refundable tax credits. Subject to certain caps, employers may be able to recover up to 100% of qualified sick leave wages. Also, the FCCRA includes an exemption wherein the Secretary of Labor may exempt a business with 50 or fewer employees if it "would jeopardize the viability of the business." This provision is especially relevant in Tennessee, where 94% of the small business sector is made up of small businesses with less than 50 employees. Also, small businesses should be aware the United States Small Business Administration is working to make disaster assistance available through small business loans of up to \$2 million per applicant.

This analysis is provided based on information currently available. As this health crisis is rapidly evolving, the guidance for response is subject to continual update. Our employment lawyers are here to assist you and encourage you to contact us as you need legal advice. Please click here for contact information.