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## President Trump Signs the Families First Coronavirus Response Act

March 19, 2020

To help our clients navigate the coronavirus (COVID-19) crisis, Keane & Beane is providing numerous Legal Alerts on a variety of issues. The information contained in this Legal Alert is applicable as of today, March 19, 2020. Many situations are so fact specific and nuanced that this Legal Alert only addresses some of the more pressing ongoing issues. The discussion below is therefore general and does not address all considerations and specific analyses that may need to be undertaken prior to taking action.

On March 18, 2020, President Trump signed a bill (HR 6201) into law entitled the Families First Coronavirus Response Act providing job protection, emergency sick leave and paid family medical leave benefits to employees in certain circumstances due to COVID-19. The full text of such legislation can be found [HERE](#). This Legal Alert addresses the Emergency Family

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Please visit [www.kblaw.com](http://www.kblaw.com) and feel free to contact any of our attorneys.

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and Medical Leave Expansion Act and Emergency Paid Sick Leave Act contained within the legislation.

### **Emergency Family and Medical Leave Expansion Act (“FMLEA”)**

The FMLEA portion of the bill expands the provisions of the Family Medical Leave Act (“FMLA”) requiring employers to provide employees with up to twelve (12) weeks of leave due to a qualifying need related to a public health emergency, as defined as an emergency with respect to COVID-19 declared by a Federal, State, or local authority. However, an employer may elect to exclude emergency responders from entitlement to this leave. The term “employer” includes any public agency, as is currently defined in the FMLA, to include political subdivision of states.

Employees are eligible for such leave if they have been employed for at least thirty (30) calendar days by the employer from which they seek leave. Under the FMLEA, employees are entitled to leave when, due to a public emergency, the employee is unable to work (or telework) due to:

- 1) A need for leave to care for the employee’s child under 18 years of age if the school (elementary or secondary) or place of care has been closed; or
- 2) The child care provider who receives compensation for providing such services on a regular basis to such child is unavailable.

The first ten (10) days of FMLEA leave taken by an employee may be unpaid leave. However, an employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for such unpaid leave. After the first ten (10) days of unpaid leave, the employee is entitled to paid leave in an amount that is not less than two-thirds (2/3) of the employee’s regular rate of pay multiplied by the number of hours the employee would otherwise be normally scheduled to work. Where an employee works a varying work schedule and the employer cannot determine with certainty the number of hours the employee would have worked, the number of hours is calculated by utilizing the average number of hours the employee worked per day over the prior six (6) month period

or, if the employee did not work during such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day the employee would normally be scheduled to work. Paid leave under the FMLEA is limited per employee to a maximum of \$200 per day and \$10,000 in the aggregate.

An employee is required to give notice to his/her employer of the need for such leave as soon as practicable. After the need for leave has terminated, the employer must make a reasonable effort to restore the employee to a position equivalent to the position the employee held when the leave commenced.

The FMLEA is effective not later than 15 days after its enactment (April 2, 2020) and expires on December 31, 2020.

### **Emergency Paid Sick Leave Act (“EPSLA”)**

The EPSLA requires employers to provide emergency paid sick leave to employees who are 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; or
- 2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- 3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis; or
- 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 subparagraph (2); or
- 5) The employee is caring for his/her child if the school or place of care of the child has been closed, or the child care provider who receives compensation for providing such services on a regular basis to such child 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.

The term “employer” includes any public agency, as is currently defined in the Fair Labor Standards Act (“FLSA”), to include political subdivision of states. However, an employer may elect to exclude emergency responders from entitlement to this leave.

An employee is eligible for such leave immediately, regardless of how long the employee has been employed by an employer. The law provides that full-time employees are entitled to eighty (80) hours of emergency paid sick leave and part-time employees are entitled to emergency paid sick leave for the number of hours equal to the average number of hours such employee works over a two (2) week period.

An employee entitled to emergency paid sick leave is paid at the employee’s regular rate of pay, or the NYS minimum wage, whichever is higher, multiplied by the number of hours the employee would otherwise be normally scheduled to work. However, for employees utilizing emergency paid sick leave for the reasons outlined in subparagraphs 4, 5 or 6 above, the employee is paid two-thirds (2/3) such wage. For such part-time employees who work a varying work schedule and the employer cannot determine with certainty the number of hours the employee would have worked, the number of hours is calculated by utilizing the average number of hours the employee worked per day over the prior six (6) month period or, if the employee did not work during such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day the employee would normally be scheduled to work. Such emergency paid sick leave is limited to \$511 per employee per day for emergency sick leave taken pursuant to subparagraphs 1, 2 or 3 above (aggregate \$5,110) and limited to \$200 per employee per day for emergency sick leave taken pursuant to subparagraphs 4, 5 or 6 above (aggregate \$2,000). Emergency paid sick leave does not carry over from year to year. Employees may not be required to utilize other accrued leave time prior to utilizing emergency paid sick leave pursuant to the EPSLA.

After the first workday an employee receives emergency paid sick leave, the employer may require the employee to follow reasonable notice procedures in order to continue receiving such leave. Additionally, the law requires employers to post a notice prepared by the Secretary of Labor in conspicuous places on the premises of the employer where notices to employees are

customarily posted. Employers are further prohibited from discharging, disciplining, or discriminating against any employee who takes leave pursuant to the EPSLA, files/institutes a complaint/proceeding under or related to the EPSLA or testifies in such proceeding. Employers who violate the EPSLA are in violation of the FLSA and are subject to its penalties.

The EPSLA is effective not later than 15 days after its enactment (April 2, 2020) and expires on December 31, 2020.

## **Payroll Tax Credits**

In addition to instituting the FMLEA and the EPSLA, the bill provided for tax credits to employers. However, such payroll tax credits do not apply to political subdivisions.

## **Prior Keane & Beane COVID-19 Legal Alerts**

Keane & Beane, P.C. has prepared several Legal Alerts concerning the State's response to COVID-19 and the impacts on local governments. Our Legal Alerts are available at the links below:

- [Executive Order 202.5 - Prohibition on Municipalities From Unilaterally Issuing Emergency Orders in Response to COVID-19](#)
- [New York Enacts Law Providing Job Protection and Pay for New Yorkers Quarantined as a Result of COVID-19](#)
- [Executive Order 202.4 – COVID-19: Reduction in Workforce By Municipalities](#)
- [Open Meetings Law in Light of COVID-19](#)
- [COVID-19 Issues for Municipalities](#)
- [Updates From Governor's March 16, 2020 Press Conference](#)

## **Consult Counsel Regarding Specific Questions**

Given the fluidity of this rapidly developing situation, we encourage you to reach out to a member of the Keane & Beane Labor Relations and Employment Law or Municipal Law Practice Groups with questions regarding specific situations. We note that there are legislative developments in Congress and

New York which impact each of these questions, and which we are closely monitoring. Because of the frequent developments, you should consult counsel regarding specific questions.

For questions on employment and labor issues contact Jaclyn G. Goldberg, William Kang, Esq. or Lance H. Klein and on general municipal issues contact Nicholas M. Ward-Willis, Esq. or Drew Victoria Gamilis, Esq. or any other attorney in our Labor Relations and Employment Law or Municipal Law Practice Groups.

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