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Families First Coronavirus Response Act

The United States has enacted the Families First Coronavirus Response Act, which will require employers with fewer than 500 employees to provide paid leave to employees who are impacted by COVID-19 and offer tax credits to employers that do so. The law takes effect no later than April 2, 2020 and expires on December 31, 2020.

The law contains three sections of particular interest for employers:

- Emergency Paid Sick Leave Act
- Emergency Family and Medical Leave Act Expansion
- Tax Credits for Paid Sick and Paid Family and Medical Leave

Note: Nothing in the law diminishes any rights that employees may have under federal, state, or local laws, collective bargaining agreements, or an employer's existing policy.

Below is a summary of the new law.

Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act requires employers with fewer than 500 employees to provide paid sick leave to all employees.

Basic Leave Entitlement:

Full-time employees must be provided with 80 hours of paid sick leave. Part-time employees are entitled to paid sick leave amounting to the average number of hours they work over a two-week period.

Use of Paid Sick Leave:

Employees are entitled to use the leave when they are unable to work (or telework) because of the following reasons:

- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19 or is caring for an individual who is subject to such an order.
- The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19 or is caring for an individual who has been advised to self-quarantine.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- The employee is caring for their child due to their school or place of care being closed, or their childcare provider is unavailable, due to COVID-19 precautions.
- 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.

Note: Employers are prohibited from requiring an employee to use other paid leave provided by the employer prior to using paid sick leave required by the Emergency Paid Sick Leave Act. Employers are also prohibited from requiring workers to find a replacement to cover their hours during their time off.

Exception:

Under the law, an employer of a healthcare provider or an emergency responder may elect to exclude the employee from the paid sick leave requirement.

The Department of Labor also has the authority to issue regulations exempting employers with fewer than 50 employees from the sick leave requirement if that requirement would jeopardize the viability of the business.

Pay During Leave:

During the sick leave, the employer must generally pay employees their regular rate of pay (as defined by the Fair Labor Standards Act) or the applicable minimum wage, whichever is higher, up to a maximum of \$511 per day (and a total of \$5,110). However, leave to care for an individual on quarantine/isolation/self-quarantine or to care for a child whose school or daycare is closed or whose childcare provider is unavailable may be compensated at 2/3 of the employee's regular rate of pay, up to a maximum of \$200 per day (and a total of \$2,000).

For employees with variable work schedules, the determination of hours to be paid is based on the average hours the employee was scheduled per day over the six-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type. If the employee does not have six-months of work history with the employer, hours are based on the employee's reasonable expectation at the time of hire of the average hours the employee would normally be scheduled to work.

Employer Notice:

Employers must post a notice describing these requirements when such notice is provided by the Department of Labor, which should be available by March 25, 2020. Once the Department of Labor publishes the notice, it will be available for download from the State & Federal Resources Section of HR411®.

Retaliation Prohibited:

Employers are prohibited from taking adverse action against an employee for exercising their rights under the law.

Emergency Family and Medical Leave Expansion Act

The Emergency Family and Medical Leave Expansion Act amends the Family and Medical Leave Act (FMLA) to temporarily require employers with fewer than 500 employees to provide public health emergency leave (PHEL).

Employee Eligibility:

To be eligible for PHEL, an employee must:

- Work for an employer with fewer than 500 employees.
- Have worked for the employer for at least 30 calendar days prior to the leave.
- Use of PHEL:

Eligible employees may use up to 12 weeks of job-protected leave to care for their child under 18 years of age if their school or place of care has been closed, or their childcare provider is unavailable, due to a public health emergency.

Pay During PHEL:

The first 10 days of PHEL may be unpaid, but the employee may elect to substitute any accrued paid leave, including emergency paid sick leave, during this period. Employees are entitled to paid PHEL after the first 10 days, at a rate of no less than two-thirds their regular rate of pay, up to a maximum of \$200 per day.

Exception:

An employer of a healthcare provider or an emergency responder may elect to exclude the employee from the PHEL requirement.

The U.S. Department of Labor also has the authority to issue regulations exempting employers with fewer than 50 employees where the requirements would jeopardize the viability of the business.

Job Restoration:

At the end of PHEL, the employer must generally return the employee to the same or equivalent position. However, employers with fewer than 25 employees are exempt from this requirement if:

- The employee's position doesn't exist after PHEL due to economic conditions or other changes in operating conditions that affect employment and were caused by a public health emergency during the period of leave;
- The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held before the leave; and
- The employer makes reasonable efforts to contact the employee if an equivalent position becomes available within the next year.

Paid Family Leave and Paid Sick Leave Tax Credits:

Under the law, employers with fewer than 500 employees are allowed a credit against employer Social Security tax liability equal to 100 percent of the qualified sick leave wages paid by the employer, subject to the caps discussed above. The credit is increased by certain specified health expenses (such as, employer-paid health plan premiums) that are excluded from employees' income.

The tax credit effectively reduces the amount of federal employment taxes that must be deposited with the IRS, usually within a few days of the payroll date. This is intended to provide the funds needed to pay sick and family leave benefits under the law. However, in some cases, such as complete closure of a business, the Treasury Department and IRS will process claims for advance payments of the tax credit.

Because the credit is fully refundable, employers will receive reimbursement of the amount paid, subject to the caps, even if their tax liability is less than the amount paid out in the required leave. Emergency paid sick leave and PHEL wages paid are also exempt from Social Security taxes otherwise imposed on the employer.