Date: March 25, 2020

The Families First Coronavirus Response Act (FFCRA; “The Act”) was signed into law on March 18, 2020,and becomes effective on April 2, 2020. The act generally requires employers with less than 500 employees to provide a certain amount of paid sick and paid leave to employees affected by COVID-19, and provides affected employers with a corresponding employment tax credit. In addition, the FFRCA temporarily expands Family and Medical Leave Act (FMLA) requirements to offer protected leave related to the coronavirus. The Act contains three sections of particular interest for employers:

* Emergency Paid Sick Leave
* Emergency Family and Medical Leave Act Expansion
* Tax Credits for Paid Sick and Paid Family and Medic al Leave

**Which Employers Are Affected?**

Generally, the legislation affects private-sector employers with under 500 employees. The Department of Labor (DOL) will issue regulations to exempt certain health-care providers and emergency responders from requirements that they offer paid family leave and paid sick leave; as well as small businesses with fewer than 50 employees, if such requirements would jeopardize the viability of the small business. However, the State of Maryland may get involved on determining if a specific business with under 50 employees would be detrimental to their overall all business viability.

Based on our preliminary review of the Act, the following should provide you with some answers to questions and preliminary guidance so that you can prepare to ensure compliance with it.



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**EMERGENCY PAID SICK LEAVE**

Reasons for Paid Sick Leave. The Act requires all private employers with up to 500 employees to provide up to 80 hours of paid sick leave in addition to any leave already provided by the employer to any employees who must be absent from work and is unable to telework (work remotely) 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 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);

1. 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 This is not limited to only family members.
2. 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.

**Various Requirements and Limitations**

* Employers may not require employees to use other paid leave before using this emergency paid leave.
* Employers are prohibited from requiring employees to find a replacement employee to cover their shift during a time when the employee is using emergency paid sick leave.
* Sick leave need not be paid out on termination of employment and cannot be used intermittently.
* Employers will be required to post a Notice, advising employees of their rights under the Act, which the Department of Labor is to have prepared within 7 days of the enactment of the Act. The requirements of the Act will expire on December 31, 2020.

**Eligibility- Amounts Paid**

* If the reason for emergency paid sick leave is for the reasons in Sections 1, 2 or 3 above, the employer must pay 80 hours of paid sick leave at the employee’s regular rate. If the reason for paid sick leave is as for the reasons in Sections 4, 5 or 6 above, the employer must pay 80 hours of paid sick leave at two-thirds the employee’s regular rate.
* All employees are eligible for emergency paid sick leave immediately upon hire (regardless of how long they were employed prior to the leave).

**Cap on Paid Sick Leave Wages**

* If the reason for emergency paid sick leave is for the reasons in Sections 1, 2 or 3 above, the maximum wages to be counted is capped at $511 per day up to $5,110 total per employee.
* If the reason for emergency paid sick leave is for the reasons in Sections 4, 5 or 6 above, the maximum wages is capped at $200 per day up to $2,000 total to care for others and any other substantially similar condition.

**Carryover and Interaction with Other Paid Leave:** Emergency paid sick leave will not carry over to the following year and may be in addition to any paid sick leave currently provided by employers.

**Calculating the Rate of Pay**

* Employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking paid sick leave.
* Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work over a two-week period.

**FAMILY AND MEDICAL LEAVE**

The Act requires all private employers with up to 500 employees to provide paid leave to those employees who are unable to work (or telework) due to a need for leave to care **for the son or daughter under 18 years of age** of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency related to COVID-19.

**Reasons for Emergency Family and Medical Leave**. Any individual employed by the employer for at least 30 days (before the first day of leave) may take up to 12 weeks of job-protected leave to allow the employee, who is unable to (a) work or telework, or (b) care for the employee’s child (under 18 years of age) if the child’s school or place of care is closed or the childcare provider is unavailable due to a public health emergency.

**Eligibility.** To be eligible for this Emergency FMLA, employees need only to have been employed for 30 days.

**Amounts to Be Paid**

* The first 10 days of this Emergency FMLA may be unpaid, though the employee may elect to substitute paid time off, or emergency paid sick time offered under the Act.
* An employer may not, however, require an employee to substitute paid time off for any of this Emergency FMLA time off.
* After the first 10 days of leave, the remaining 10 weeks of leave must be paid at a rate of at least 2/3 of the employee’s usual rate of pay for the number of hours he or she would usually be scheduled to work, capped at $200/day or $10,000 total per employee.

**Calculating Pay for Non-Full Time Employees**

* Employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking Emergency FMLA.
* Employees who have worked for less than six months prior to leave are entitled to the employee’s reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.

**Job Restoration**

* Employers with 25 or more employees will have the same obligation as under traditional FMLA to return any employee who has taken Emergency FMLA to the same or equivalent position upon the return to work.
* Employers with 25 or fewer employees may not have to reinstate an employee who takes leave pursuant to this section if the position held by the employee no longer exists due to economic conditions or other changes that were caused by COVID-19. In that case, the employer must make reasonable efforts to restore the employee to an equivalent position with equal pay and benefits, and if not possible, must contact the employee over the following year if an equivalent position becomes available.

**Exceptions.** The Act contains language providing authority to the Secretary of Labor to exempt employers with fewer than 50 employees from paid sick leave and expanded FMLA requirements, if complying would jeopardize the business as a going concern, and to exclude certain healthcare providers and emergency responders from receiving such benefits.

**Tax Credit to Employer for Paid Sick Leave and Paid Family and Medical Leave**.

This Act provides a series of refundable tax credits for employers who are required to provide the Emergency Paid Sick Leave and Emergency Paid Family and Medical Leave described above. **These tax credits are allowed against the employer’s portion of Social Security taxes.** While this limits application of the tax credit, employers will be reimbursed if their costs for qualified sick leave or qualified family leave wages exceed the taxes they would owe.

* Specifically, employers are entitled to a refundable tax credit equal to 100% of the qualified sick leave wages paid by employers for each calendar quarter in adherence with the Emergency Paid Sick Leave Act. The qualified sick leave wages are capped at $511 per day ($200 per day if the leave is for caring for a family member or child) for up to 10 days per employee.
* Similarly, employers are entitled to a refundable tax credit equal to 100% of the qualified family leave wages paid by employers for each calendar quarter in accordance with the Emergency Family and Medical Leave Expansion Act. The qualified family leave wages are capped at $200 per day for each individual up to $10,000 total. Only those employers who are required to offer Emergency FMLA and Emergency Paid Sick Leave may receive these credits.

We will continue to monitor this rapidly developing situation and provide updates as appropriate. There is no legal or interpretive guidance regarding this new Act or how it may interact with other laws and therefore these guidelines are subject to change, modification or clarification. If you have any questions, please call us.



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