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NEW PAID LEAVE LEGISLATION – CORONAVIRUS RELIEF PACKAGE

On Wednesday, March 18, 2020, President Trump signed into law the *Families First Coronavirus Response Act*, a coronavirus relief package that includes paid emergency leave for employees, and expands the Family and Medical Leave Act. The legislation will apply to employers with less than 500 employees, and exempt small businesses with fewer than 50 employees if the required leave would jeopardize the economic viability of their businesses. This law will take effect within 15 days (April 2, 2020), and remain in effect until December 31, 2020.

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

Emergency Paid Sick Leave Act

Paid Sick Time Requirement

- An employer must provide paid sick time to each employee who is unable to work (or telework) due to a need for leave 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).
 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.
 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.
- Section 5102(a).*
- Full time employees shall be entitled to 80 hours of paid sick time.
 - Part time employees shall be entitled to a number of hours equal to the number of hours that such employee works, on average, over a 2-week period.
 - The paid sick time shall be available for immediate use regardless of how long the employee has been employed by an employer.
 - Paid sick time under this section shall not carry over from 1 year to the next. *Section 5102(b).*
 - Paid sick time shall cease beginning with the employee's next scheduled work shift immediately following the termination of the need for paid sick time. *Section 5102(c).*
 - An employer may not require that the employee search for or find a replacement employee to cover the hours during which the employee is using paid sick time. *Section 5102(d).*
 - An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time. *Section 5102(e).*

Covered Employer:

- A **private** entity or individual engaged in commerce or in any industry or activity affecting commerce that employs fewer than 500 employees;
- Small businesses with fewer than 50 employees may be exempt if the required leave would jeopardize the economic viability of their businesses.
- A **public** agency or any other entity that is not a private entity or individual, which employs 1 or more employees.
- An employer of an employee who is a health care provider or an emergency responder may be exempt from application of the Act.

Calculation of Paid Sick Time

Calculated based on the employee's required compensation and the number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated), not to exceed:

- \$511 per day and \$5,110 in the aggregate for a use described in paragraph (1), (2), or (3) of *Section 5102(a)*; and
- two-thirds the employee's regular rate, not to exceed \$200 per day and \$2,000 in the aggregate for a use described in paragraph (4), (5), or (6) of *Section 5102(a)*.

Prohibited Acts

Employers may not discriminate against any employee who: (1) takes leave in accordance with this Act; and (2) has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act (including a proceeding that seeks enforcement of this Act), or has testified or is about to testify in any such proceeding. *Section 5104.*

Emergency Family and Medical Leave Expansion Act

Amendments to the Family and Medical Leave Act of 1993 to add "SEC. 110. PUBLIC HEALTH EMERGENCY LEAVE"

- The employee must have been employed for at least 30 calendar days.
- Employer threshold is "50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year."
- Employee may take up to 12 weeks of job-protected leave to allow an employee, who is unable to work or telework, to 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.
- The first 10 days for which an employee takes leave may be unpaid; however, the employee may choose to apply accrued paid time off or other medical or sick leave to this period.
- The employer cannot require the employee to apply accrued paid time off or other medical or sick leave to the first 10-day period.
- After those 10 days, an employer shall provide paid leave for each day that an employee takes at **two-thirds the employee's regular rate of pay** for the number of hours the employee would otherwise be normally scheduled, not to exceed \$200 per day and \$10,000 in the aggregate.
- Employees who work a part-time or irregular schedule shall be paid based on the average number of hours the employee worked for the 6 months prior to taking the emergency FMLA.

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