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## FAMILIES FIRST CORONAVIRUS RESPONSE ACT

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act. The Act is an economic stimulus plan intended to address the impact of the COVID-19 outbreak. The Act takes effect April 2, 2020, and contains several important provisions for employers. In particular, the Act temporarily expands coverage (including paid leave) under the federal Family and Medical Leave Act, and also creates a new temporary federal Emergency Paid Sick Leave Act.

Below is a summary of several important aspects of the new laws. All employers should re-evaluate their leave policies, and prepare to implement these new requirements.

### EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

Effective April 2, 2020 through December 31, 2020. The Act expands FMLA coverage and requires paid leave.

#### Expands FMLA Coverage and Eligibility

- Applies to all employers with fewer than 500 employees
  - Secretary of Labor may issue regulations to exclude healthcare providers and emergency responders, and small businesses with fewer than 50 employees (if the required leave would jeopardize the business)
- Employee eligibility requires 30 days of employment prior to the designated leave (rather than 1250 hours in the previous year)

#### Reasons for Emergency Leave

- Only Qualifying Reason for Emergency FMLA leave is: to allow an employee, who is unable to work or telework, to care for the employee's child (if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency)

#### Payment

- First 10 days may be unpaid (employee may elect to use any accrued paid leave during this time)
- After first 10 days – must pay:
  - Full time employees at 2/3 the employee's regular rate for the number of hours the employee would normally be scheduled
    - Limited to: \$200/day, and \$10,000 total
  - Part time employees / Varying schedules

- 2/3 the employee's regular rate
- Number of hours calculated as follows:
  - Average number of hours the employee worked for the 6 months prior to taking Emergency FMLA
  - If employee has not worked 6 months prior to taking leave, pay the average number of hours the employee would normally be scheduled to work
- Limited to: \$200/day, and \$10,000 total

#### Job Restoration

- Must restore an employee to an equal or equivalent position upon return from leave
- Unless employer employees fewer than 25 employees and the following conditions are met:
  - Employees position no longer exists due to economic conditions or other changes in operating conditions of the employer that affect employment and are caused by a public health emergency during the period of leave;
  - Employer makes reasonable efforts to restore the employee; and
  - Employer makes reasonable efforts to contact the employee if an equivalent position becomes available for 1 year following the leave.

### **EMERGENCY PAID SICK LEAVE**

Effective April 2, 2020 through December 31, 2020. The Act creates a new federally mandated paid sick leave.

#### Coverage

- Applies to all employers with fewer than 500 employees

#### Benefit

- Number of hours
  - Full time employees: 80 hours of paid sick leave
  - Part-time: a number of hours equal to the number of hours that such employee works, on average, over a 2-week period.
- Paid at the employee's regular rate (or 2/3 regular rate when caring for a family member)
- \*It is in addition to any paid sick leave currently provided by employers\*
  - [This likely means that it is in addition to Washington State Paid Sick Leave.]
- If employee requests – must pay emergency sick leave during initial unpaid portion of Emergency Family and Medical Leave Expansion Act

#### Reasons for Paid Sick Leave

- Requirement or recommendation to quarantine due to exposure to, or symptoms of, coronavirus;
- Self-isolation due to employee's coronavirus diagnosis;
- Obtain a diagnosis or care because the employee is exhibiting symptoms;
- Care for an at-risk family member who is self-isolating due to a diagnosis, exhibiting symptoms, adhering to a requirement or recommendation to quarantine; or
- Care for the employee's child if the child's school or place of care has been closed due to coronavirus

#### Carryover

- Does not carryover to the following year

#### Rate of Pay

- Paid at the employee's regular rate (or 2/3 regular rate when caring for a family member)
- Part-time employees – hours calculated as follows:
  - Average number of hours the employee worked in the 6 months prior to taking paid sick leave
  - If employee has not worked 6 months prior to taking leave, pay the average number of hours the employee would normally be scheduled to work

#### Notices

- Employers must post a notice regarding the requirements of this Act. The Secretary of Labor will publish a model notice by March 25th.

#### Prohibitions

- Cannot require an employee to find a replacement employee to cover shifts
- Cannot require an employee to use other paid leave provided by the employer, prior to using this leave.
- Cannot retaliate or discriminate based on taking leave, filing a complaint, or cooperating in any proceeding regarding enforcement of the Act.
- Cannot change current paid leave policies after enactment to avoid obligations of additional leave mandated by Emergency Paid Sick Leave Act

#### Violations

- Failure to pay sick leave: Constitutes violation of minimum wage, and employees are entitled to double damages, interest, and attorney's fees.
- Wrongful termination: Employees are entitled to double damages, interest, attorney's fees, and legal or equitable relief as may be appropriate (e.g. reinstatement, lost wages, etc.)

### **Emergency Unemployment Insurance Stabilization and Access Act of 2020**

Provides \$1 billion in 2020 for emergency grants to states.

#### **Employer Requirements**

- Must provide notification of the availability of unemployment compensation at the time of separation. (This will be enforced by the States, as a condition of receiving the grants.)

### **Tax Credits for Paid Sick and Paid Family and Medical Leave**

The new Act also creates several tax credits. Employers should talk to their accountants and tax professionals regarding these credits.

#### **Payroll Tax Credit**

- Refundable tax credit equal to the total leave wages paid by an employer under these emergency provisions.
  - Capped at \$200 per day and \$10,000 for all calendar quarters for Emergency Family and Medical Leave.
  - The limits on the Emergency Paid Sick Leave credit depend on the reason for the sick leave (i.e. the employee's own condition vs. caring for a family member).
- Also creates a tax credit for amounts paid for the employee's health plan coverage while they are on leave.

### **Healthcare Coverage for Testing for COVID-19**

Private health plans are required to provide coverage for COVID-19 testing, at no cost to the employee (including deductibles and copays).

Prepared by Sean M. Worley.

If you have questions about this or other employment matters please contact Gary E. Lofland or Sean M. Worley at Meyer, Fluegge & Tenney P.S. at 509-575-8500.