

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Client Bulletin for Employers

On March 18, 2020, the President signed into the law the Families First Coronavirus Response Act (FFCRA or the “Act”). The Act contains various significant provisions for employers. This bulletin provides a general overview of provisions in the FFCRA. Clients should contact Kirton McConkie with questions they have and/or for specific instructions related to the Act and its application to unique circumstances.

APPLICABILITY

As a threshold matter, the Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion Act only applies to employers with fewer than 500 employees¹ and shall “take effect not later than 15 days after the date of enactment.”

NOTICE

Employers should post notice of this Act in a conspicuous place. The Secretary of Labor will provide a form for such notice before March 25, 2020.

EMERGENCY PAID SICK LEAVE ACT

TRIGGERING EVENTS

Employers who are subject to the Act must provide up to two weeks of additional sick leave to employees who are unable to work due to the following:

1. The employee is unable to work due to a Federal, State or local quarantine or isolation order related to COVID-19.
2. A health care provider has advised the employee to self-quarantine due to concerns about COVID-19.
3. The employee is experiencing symptoms of COVID-19 and needs to obtain a medical diagnosis.
4. To care for an individual who is subject to an order under (1) or advice under (2).
5. To care for the employee’s son or daughter (under 18 years old) if the child’s school or place of care is closed.
6. The employee experiences any substantially similar condition as may be specified by the Secretary of Health and Human Services.

DURATION OF LEAVE

The duration of leave is limited to 80 hours for full-time employees. Part-time employees are entitled to leave that is equal to the average number of hours worked during prior two week periods.

AMOUNT OF LEAVE

The amount of leave is capped at \$511 per day, with an aggregate limit of \$5,111, for an employee who takes leave under categories 1-3 (above). An employee who takes leave under categories 4-6 (above) is entitled to \$200 per day up to an aggregate limit of \$2,000. Additional leave under the Act does not carry over from one year to the next and unused leave is not required to be paid out upon termination.

RETALIATING

Retaliating against an employee who seeks or uses the benefits provided by this Act is prohibited.

¹*It is unclear whether subsequent legislation will specify new duties for employers with more than 500 employees.*

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

EXPANDED COVERAGE FOR FMLA PROTECTION

The Act expands the protections available under the FMLA to include an “employee who is 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.” The expanded coverage may also apply to employees who have worked for as few as 30 days for the employer.

PAID LEAVE

The first 10 days of leave taken under the expanded FMLA protection category (above) are unpaid, though the employee may elect to use available sick leave or accrued vacation/sick time during this period. Thereafter, the employee is entitled to pay in “an amount that is not less than two-third of an employee’s regular rate of pay” based upon the average hours worked in the past. Such payments are subject to a limit of \$200 per day with an aggregate limit of \$10,000.

TAX CREDITS FOR PAID SICK LEAVE AND/OR PAID FMLA LEAVE

The Act provides refundable tax credits against the employer’s quarterly Social Security Tax payments for Sick Leave and FMLA Leave payments that are made during the subject quarter. The Treasury is supposed to provide further guidance regarding this tax credit provision.

FOR MORE INFORMATION CONTACT

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