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EMPLOYER ALERT

UPDATE: FAMILIES FIRST CORONAVIRUS RESPONSE ACT

TAKEAWAYS FOR EMPLOYERS

March 2020

On March 18, 2020, President Trump signed into law the “Families First Coronavirus Response Act,” which will become effective on April 2, 2020. Unless extended, it will expire on December 31, 2020.

The law’s purpose is to provide paid benefits to workers who need time off to deal with the COVID-19 pandemic. Without such time off, the logic goes, potentially sick workers will feel compelled to work and spread the COVID-19 virus to others.

The law creates two (2) new types of paid time-off benefits: (1) Emergency Paid Family & Medical Leave; and (2) Emergency Paid Sick Leave. To pay for these employer-mandated benefits, employers will receive refundable tax credits equal to 100% of the wages that are paid to eligible affected employees (as explained below).

EMERGENCY FAMILY & MEDICAL LEAVE EXPANSION ACT

Overview. The Emergency Family and Medical Leave Act (E-FMLA) applies to eligible employees of employers with fewer than 500 employees. The E-FMLA period may extend for 12 weeks, but the first ten (10) days may be unpaid. However, during that 10-day period, employees may choose to use accrued personal or sick leave, but employers may not require employees to do so. This leave benefit covers employees who have been working for at least thirty (30) calendar days. The law also allows the U. S. Department of Labor (USDOL) to issue regulations that will exempt (1) employers who employ fewer than 50 employees if “the imposition of such requirements would jeopardize the viability of the business as a going concern;” and (2) employees who are health care providers or emergency responders.

Reasons for Emergency 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 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. This is now the **only** qualifying need for Emergency FMLA and a significant change from the prior version of the bill passed by the House, which contained several other COVID-19-related reasons to provide Emergency FMLA.

Paid Amount. After the first ten (10) days, employers must compensate employees in an amount that is not less than two-thirds (2/3) of the employee’s regular rate of pay. The new Act now

imposes a limit of pay that employees are entitled under the Act at \$200 per day with an aggregate limit of \$10,000 per employee.

Job Restoration. Regarding job restoration, employers with 25 or more employees will have the same obligations as under the traditional FMLA to return any employee to their same or equivalent position on their return to work after E-FMLA leave.

EMERGENCY PAID SICK LEAVE

Overview. Employers with fewer than five hundred (500) employees will be required to provide full-time employees two weeks (80 hours) of paid sick leave for specific circumstances related to COVID-19. Under certain circumstances, employers who employ health care providers or emergency responders may elect to exclude those employees from the emergency sick leave provisions. An employer cannot require a worker to use any other available paid leave before using the sick time.

Reasons to Use Paid Sick Leave. There are six (6) reasons that allow an employee to take Emergency Sick leave under the new Act:

1. If the employee is subject to a federal, state, or local quarantine or isolation related to COVID-19;
2. If the employee has been advised by a healthcare provider to self-quarantine related to concerns about COVID-19;
3. If the employee is experiencing COVID-19 symptoms and seeking a medical diagnosis;
4. If the employee is caring for an individual that is subject to a federal, state, or local quarantine or isolation or has been advised by a healthcare provider to self-quarantine related to COVID-19;
5. If the employee is caring for the employee's child because the child's school or care facilities are closed or unable to provide childcare to the employee's child due to a public emergency; or
6. If the employee is experiencing any other substantially similar condition as specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor.

The new Act provides limits on paid sick leave per employee. The limits are \$511 per day with a total of \$5,110 for an employee's own use and \$200 per day with a total of \$2,000 to care for others as allowed in reasons #4, #5 and #6 above. Wages required to be paid under the emergency sick leave provisions will not be subject to the 6.2 percent social security payroll tax typically paid by employers on employees' wages.

Part-time employees will be entitled to the number of hours of paid sick time equal to the average number of hours they worked over the previous six (6) months prior to taking paid sick leave. If the employee has not worked for the employer for six (6) months, the employee would be eligible for leave in the amount of the average number of hours the employee is scheduled to work in a two-week period.

Employers will have to post a notice containing information regarding the emergency sick leave provisions; the Labor Department is to create a model notice no later than 7 days after the Act is enacted.

SUMMARIES:

The charts below summarize these new paid benefits:

EMERGENCY FMLA

Employer Coverage	Employee Eligibility	Duration of Leave	Benefits	Employee Job Restoration Rights
<p>Employers with fewer than 500 Employees</p> <p><u>Caveat:</u> US DOL may issue regulations exempting employers with fewer than 50 employees and the application of the law would jeopardize its viability.</p>	<p>Any employee who (1) has worked for the company at least 30 days; and (2) is unable to work or telework; and (3) the employee provides care to a child (18 or younger) whose school or place of care is closed.</p> <p><u>Caveat:</u> US DOL may issue regulations to make exempt employees who are health care providers/emergency responders</p>	<p>Up to <u>12 weeks</u></p>	<p><u>*The first 10 days</u> are unpaid (but employee can elect to use paid time off benefits otherwise available)</p> <p><u>*After 10 days,</u> the employee receives two-thirds (2/3) of their regular rate subject to caps.</p> <p><u>*Caps:</u> \$200 per employee per day; \$10,000 per employee aggregate.</p>	<p>*For employers with <u>25 or more employees,</u> employees must be restored to their former positions, or equivalent.</p> <p>*For employers with <u>24 or fewer employees,</u> job restoration may not be required if the employee’s position no longer exists or other circumstances occur during the leave period caused by the COVID-19 outbreak.</p>

EMERGENCY PAID SICK LEAVE

<u>Employer Coverage</u>	<u>Employee Eligibility</u>	<u>Duration of Benefits</u>	<u>Benefits</u>	<u>Reasons for Leave</u>	<u>Interaction with other Benefits/Carry Over</u>	<u>Rate of Pay</u>
<p>Employers with <u>fewer than 500 employees</u></p> <p><u>Caveat:</u> US DOL may issue regulations exempting employers with fewer than 50 employees and the application of the law would jeopardize its viability.</p>	<p>All full-time employees (regardless of duration)</p> <p><u>Caveat:</u> US DOL may issue regulations to make exempt employees who are health care providers or emergency responders</p>	<p><u>80 hours</u> of scheduled work time</p> <p><u>*Upon termination of employment,</u> unused emergency paid sick time is not paid out.</p>	<p><u>80 hours</u> of paid time at either (1) employee’s regular rate or (2) two-thirds (2/3) of their regular rate for “Leave Reasons” 4, 5, or 6 (<i>see next column</i>)</p> <p><u>*Caps for Employees:</u> \$511 per employee per day; \$5,110 per employee aggregate.</p> <p><u>*Caps to care for Others:</u> \$200 per employee per day; \$2,000 per employee aggregate.</p>	<p>Employee is allowed leave, if:</p> <p>#1 – per order to isolate or quarantine</p> <p>#2 – advised by health care provider to isolate or quarantine</p> <p>#3 – experiencing COVID-19 symptoms and seeking medical diagnosis</p> <p>#4 – proving care to an individual subject to isolation or quarantine order or medical instructions</p> <p>#5 – caring for employee’s child whose school or place of care is closed or unavailable due to public health emergency</p> <p>#6 – Federal officials declare substantially similar conditions</p>	<p>It is in addition to other benefits provided by employer.</p> <p>Does not carry over after 12/31/2020.</p>	<p>*Employees working <u>less than 6 months</u> – are entitled to 2-week average of hours they would have worked</p> <p>*Part-Time Employees are paid on average of prior 6 months</p>

TAX CREDITS TO PAY FOR THE NEW BENEFITS

The new law provides a series of refundable tax credits for employers who are required to provide the benefits described above. These tax credits are allowed against the employer 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.

Only those employers who are required to offer Emergency FMLA and Emergency Paid Sick Leave may receive these credits.

Conclusion

We will continue to monitor this rapidly developing situation and provide updates as appropriate. Please let us know if we can help answer your questions or help you implement appropriate policies and response plans. Mr. Clark's contact information is (480) 844-0039 or etc@clarkfirm.com.

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