

March 24, 2020

Dear Friends and Colleagues,

On March 18, 2020, the Families First Coronavirus Response Act (Act) became law. The idea behind this new law is to provide employees with paid leave, either for the employee's own health needs or to care for family members.

Specific details for this Act have recently become available, and we thought it would be helpful to provide an analysis of what is inside this new law.

### **Big Picture**

- Paid Sick Leave for Workers - For COVID-19 related reasons, employees can receive up to 80 hours of paid sick leave and expanded paid child care leave when employees' children's schools are closed or child care providers are unavailable.
- Complete Financial Coverage for Employer - Employers will receive 100% reimbursement for paid leave pursuant to the Act. Health insurance costs are also included in the credit.
- Quick Reimbursement - Reimbursement will be quick and easy to obtain. An immediate dollar-for-dollar tax offset against payroll taxes will be provided. Where a refund is owed, the IRS will send the refund as quickly as possible.

### **Qualifying Reasons for Leave**

Under the FFCRA, an employee qualifies for expanded family and medical leave if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;

4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

*Recommendation: You're not expected to be a medical doctor and verify your employee's requests. However, you should have something in writing (letter/email/text) from your employee explaining their reasons for requesting the paid leave.*

### **Duration of Leave**

For reasons (1)-(4) and (6): A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

For reason (5): A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

*Recommendation: Talk to your payroll representative about how this is monitored over the period of time in question. For part-time employees, look at their average hours worked over the prior three months.*

### **Calculation of Pay**

For leave reasons (1), (2), or (3): employees taking leave shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

For leave reasons (4) or (6): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

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For leave reason (5): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

*Recommendation: Again, talk to your payroll representative about how the wages are calculated and tracked over the period of time in question.*

### **Payment for the Cost of Providing Leave**

Employers are required to deposit employee federal taxes, along with Social Security and Medicare taxes, with the IRS. Under guidance that will be released soon, employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS. The idea is that the full cost of this paid leave will be covered by the government.

If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. The details of this new, expedited procedure will be announced soon.

*Recommendation: Again, talk to your payroll representative about the mechanics of how this will work.*

### **Small Business Exemption**

Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or child care unavailability where the requirements would jeopardize the ability of the business to continue.

*Recommendation: Consider carefully before requesting this exemption. Because, in theory, this should come at no additional cost to the employer, proving financial hardship will be difficult. The Department of Labor will be publishing some guidance on this hardship exemption.*

Should you have any questions about the above, please feel free to contact our office at any time.

Sincerely,



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