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## **Update on Covid-19 and its Impact on Employers**

As the Covid-19 virus continues to spread, it is likely going to impact your workplace at some level. Decisions will need to be made about whether to restrict employees from coming to work, how to handle quarantines and whether to close your workplace. We are continuing to monitor the guidance from the CDC as well as executive orders from the Governor and will keep you updated.

You should be aware that on March 14, 2020 the US House of Representatives overwhelmingly passed the Families First Coronavirus Act (HB 6201) which will provide immediate leave and pay entitlements to employees impacted by the coronavirus. The bill passed in the Senate on March 18, 2020 and President Trump signed it into law soon after. The law will go into effect on April 2, 2020.

### **What does the Act require?**

#### FMLA

First, the Act will amend the Family and Medical Leave Act to allow an employee who is unable to work or telework to take leave due to a need to care for the employee's son or daughter under 18 years of age if the child's school or place of care has been closed, or the childcare provider is unavailable, due to the public health emergency. These amendments will also apply to any employer with one (1) or more employee and to employees who have been employed for at least thirty (30) days. The requirement that the employee have worked at least 1,250 hours in the past twelve months is also waived with respect to this leave. Thus, both full and part-time employees are eligible for leave. This extension of FMLA only provides an additional qualifying event and does not provide an additional 12-week bank of leave. Therefore, if an employee has already used some or all of their available FMLA they do not receive an additional 12 weeks.

#### PAID SICK LEAVE

Second, the Act will require employers to provide 80 hours of paid sick leave for full-time employees (or the equivalent of the average number of hours worked over two weeks for part-time employees) for the following reasons:

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 medical diagnosis;
4. The employee is caring for an individual who is subject to a federal, state or local quarantine order, or the individual has been advised to self-quarantine due to concerns related to COVID-19;
5. The employee is caring for the employee's child, if the child's school or childcare facility has been closed or the child's care provider is unavailable due to COVID-19 precautions;  
or
6. The employee is experiencing any other substantially similar condition specified by Health and Human Services in consultation with the Department of the Treasury and the Department of Labor.

Under the FMLA provisions, when leave is needed due to a school or day care closure, the employer can provide the first 10 days of leave unpaid. For the next ten (10) weeks of leave, the employee must be paid at 2/3 the employee's regular rate of pay. There is a cap of \$200 a day and \$10,000 in aggregate. If the first 10 days are unpaid, an employee may elect to substitute any accrued vacation leave, personal leave, or medical leave for the unpaid leave. Employers cannot force an employee to use their vacation or sick time before receiving this benefit.

Paid sick leave is paid at the employee's regular rate, but it too is capped: \$511 per day and \$5,110 in the aggregate for a use described in paragraph (1), (2), or (3); and \$200 per day and \$2,000 in the aggregate for a use described in paragraph (4), (5), or (6).

Employers must pay these benefits, but they will receive a tax credit for doing so.

Both the paid FMLA and paid sick leave provisions apply only to private employers with fewer than 500 employees and certain public employers. Both provisions allow an employer of an employee who is a healthcare provider or an emergency responder to elect to exclude the employee from the application of these two provisions. In addition, they both allow subsequent U.S. Department of Labor regulations to exempt small businesses with fewer than 50 employees when the provision would jeopardize the viability of the business. Both provisions will expire on December 31, 2020.

In regards to job protection, the FMLA's requirement that an employee be restored to the same or equivalent position after leave does not apply to an employer with fewer than 25 employees if the employee's position no longer exists due to economic conditions or other changes in the employers' operations that affect employment and are caused by the public health crisis during the period of leave.

The employer must make reasonable efforts to restore the employee to the same or an equivalent position, and if the reasonable efforts fail, the employer must make efforts to contact the employee and reinstate the employee if an equivalent position becomes available within a one-year period beginning on the earlier of the date on which the qualifying need related to COVID-19 concludes or the date that is 12 weeks after the date the employee's leave started.

Employers shall post and keep posted, in a conspicuous place, a notice the emergency paid leave requirements within seven days of April 2, 2020. The Secretary of Labor will provide a model notice for use by employers.