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Families First Coronavirus Response Act- Summary of Key Provisions

This is a summary of the key provisions of the Families First Coronavirus Response Act that Congress just passed. The act provides for emergency paid sick leave and for an emergency expansion of benefits under the FMLA.

The provisions apply to employers with fewer than 500 employees. The sick leave benefits apply to all employees regardless of length of service. The family leave provisions apply to employees that have worked for the employer for at least 30 calendar days.

The Department of Labor has been directed to issue regulations to exclude employers of less than 50 employees from the requirements of the law if compliance will jeopardize “the viability of the business as a going concern.”

The law becomes effective no later than 15 days after enactment and expires on December 31, 2020.

Emergency Paid Sick Leave

The Paid Sick Leave Provisions require employers with fewer than 500 employees to provide paid sick time to all of their employees (whether full- or part-time and regardless of the employee’s length of employment), where such employee is unable to work (or work from home) due to a need for leave because:

- the employee is subject to a federal, state or local quarantine or isolation order related to COVID-19, or is caring for an individual subject to such order;
- the employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19, or is caring for an individual that has been so advised;
- the employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- the employee is caring for his or her son or daughter whose school, place of care or child care provider is closed or otherwise unavailable due to COVID-19 precautions; or
- the employee is experiencing any other “substantially similar conditions”, as specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor.

Under the Paid Sick Leave Provisions, eligible full-time employees are entitled to 80 hours (two weeks) of paid sick leave, and part-time employees are entitled to a number of paid sick leave hours that is equal to the average number of hours that the employee works over a two-week period.

Employees are generally entitled to receive their regular pay rate while using their paid sick leave provided under the Paid Sick Leave Provisions subject to a cap of \$511 per day (and \$5,110 in the aggregate).

However, the Paid Sick Leave Provisions provide that an employee is only entitled to two-thirds of his or her regular pay rate in the event the employee utilizes the paid sick time (i) to care for his or her son or daughter or such other individuals under the circumstances described above or (ii) because the employee is experiencing “substantially similar conditions”. In those circumstances, the employee’s pay is subject to a cap of \$200 per day (and \$2,000 in the aggregate).

The Paid Sick Leave Provisions also include a number of restrictions on covered employers in connection with the paid sick leave benefits, including that the employer cannot:

- require its employees to use existing paid time off prior to utilizing the paid time off provided by the Paid Sick Leave Provisions; or
- terminate, discipline or in any other manner discriminate against any employee who takes paid sick leave under the Paid Sick Leave Provisions.

Additional Paid Leave under the Emergency Family and Medical Leave Expansion Act

The Additional Paid Leave Provisions expand eligibility for paid leave under the Family Medical Leave Act (“FMLA”), by requiring employers with fewer than 500 employees to provide employees who have been employed for at least 30 calendar days with 12 weeks of job-protected leave where the employee is unable to work (or work from home) due to a need for leave to care for the employee’s son or daughter under the age of 18 whose school, place of care or child care provider is closed or otherwise unavailable due to the coronavirus emergency.

During the 12-week job-protected leave period under the Additional Paid Leave Provisions, the first 10 days of leave may be unpaid—however, during this period, employees may, if eligible, receive paid sick leave under an employer sick leave policy or the Paid Sick Leave Provisions, and they may use any accrued vacation or personal leave.

After the 10 days of leave and for the remaining portion of the total 12-week job-protected leave period under the Additional Paid Leave Provisions, an employee’s pay generally cannot be less than two-thirds of his or her regular pay rate.

Following the end of the leave period, the employee is entitled to be restored by the employer to the position of employment held by the employee when the leave commenced, or to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment, as provided under the FMLA.

However, under the Additional Paid Leave Provisions, this requirement generally does not apply to employers with fewer than 25 employees if a number of conditions are satisfied, including that the employee's position no longer exists at the end of the leave period due to economic conditions caused by the coronavirus emergency and the employer makes reasonable efforts to restore the employee to an equivalent position.

Tax Credits for Qualified Wages Paid under the Sick Leave Provisions and the Additional Paid Leave Provisions

In order to provide financial assistance to employers, the law provides employers with a refundable tax credit for federal income tax purposes for qualified leave wages paid by the employer under each of the Paid Sick Leave Provisions and the Additional Paid Leave Provisions, as well as for qualified health plan expenses which are properly allocable to such wages. This tax credit is first applied to reduce an employer's payment of the employer portion of Old Age, Survivors and Disability insurance taxes (Social Security taxes). Any excess above the employer's Social Security taxes and RRTA taxes is provided as a direct tax overpayment refund to the employer.

- For sick leave provided under the Paid Sick Leave Provisions, an employer receives a federal income tax credit for the first 10 days of an employee's paid sick leave entitlement under the Paid Sick Leave Provisions. The tax credit is limited to \$511 per day (or \$200 per day in instances where the employee utilizes the paid sick time off (i) to care for his or her son or daughter or such other individuals under the circumstances permitted under the Paid Sick Leave Provisions or (ii) because the employee is experiencing "substantially similar" conditions, each as described above).
- For leave under the Additional Paid Leave Provisions, an employer receives a federal income tax credit for the full term of an employee's additional leave up to the 12 months permitted under the Additional Paid Leave Provisions. The tax credit is limited to \$200 per day and \$10,000 in the aggregate for each employee.

There is a section that references employers that are signatory to a multi-employer collective bargaining agreement. Under that section such an employer can fulfill its obligations with respect to Family Medical Leave with contributions to a multi-employer plan, benefit, program or fund that allows employees to receive payment from the fund based on the hours they have worked.

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