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LEGAL UPDATES

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What Employers Need to Know About the Families First Coronavirus Response Act

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (“FFCRA”) into law, effective within 15 days—April 2, 2020.

As enacted, the following is a brief summary of the key provisions affecting many employers:

Expanded Family Medical Leave: This provision expressly amends the well-established Family and Medical Leave Act with specific changes related to the coronavirus pandemic. Until December 31, 2020, public employers and private employers with fewer than 500 employees, who have been on the job for at least 30 days have the right to take up to 12 weeks of job-protected leave for a “Public Health Emergency,” which essentially means an inability to work due to the need to care for a son or daughter if their school has been closed or their child care provider is unavailable due to COVID-19.

Exclusions: If an employee is a healthcare provider or an emergency responder, then the employer may elect to exclude such employee from the leave.

Small employers: Private employers with fewer than 50 employees may seek exemption from the Secretary of Labor for good cause when the requirements would jeopardize the viability of the business

Pay Caps: The first 10 days of leave under this provision may be unpaid (although employees may substitute any available paid leave, such as earned PTO or vacation). Employers cannot require the substitution of paid leave. After the first 10 days, leave under this provision is to be paid at a rate of no

less than 2/3 of the employee's regular rate for hours normally scheduled to work – capped at \$200 per day and \$10,000 in the aggregate. Benefits would continue for the leave period.

Job Restoration: Generally, an employee taking leave must be returned to his/her position following leave, although there may be special circumstances for employers with fewer than 25 employees.

Furloughed or Laid Off Employees: An argument can be advanced that if an employer places its employees on furlough or lay off prior to the FFCRA's effective date (April 2), then they would not be eligible for leave under this provision; however, the express language of the Act is unclear on that topic. At minimum, employers should take care not to base lay off or furlough decisions on which employees are likely to need leave—or risk claims for retaliation/interference.

Emergency Paid Sick Leave: Public and private employers with fewer than 500 employees must provide up to 80 hours of emergency paid sick leave to full-time employees – and two-weeks leave to part-time employees based on average hours worked. Employees are eligible for this paid leave, regardless of how long they have been employed.

Reasons for Leave: Paid leave under this provision may be used for any of the following reasons:

- (1) the employee is subject to any 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 a medical diagnosis;
- (4) the employee is caring for an individual who is subject to a quarantine order or advised to self-quarantine;
- (5) the employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or
- (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Exclusions: Employers may exclude health care providers and emergency responders from emergency paid sick leave.

Pay Caps: Pay may be capped depending on the reasons for the leave. When leave is based on reasons 1-3 above, pay may be capped at \$511/day and \$5,110 in the aggregate. When leave is based on reasons 4-6 above, pay may be capped at \$200/day and \$2,000 in the aggregate.

Vacation/PTO: Employers may not require employees to use vacation, PTO or other forms of paid leave before using emergency paid sick leave.

Furloughed or Laid Off Employees: An argument can be advanced that if an employer places its employees on furlough or lay off prior to the FFCRA's effective date (April 2), then they would not be eligible for leave under this provision; however, the express language of the Act is unclear on that topic. At minimum, employers should take care not to base lay off or furlough decisions on which employees are likely to need leave—or risk claims for retaliation/interference.

Posting: Employers must post the notices of this Act in a conspicuous place. Model notices will be provided by the Secretary of Labor.

No Retaliation: Employers may not retaliate against, discharge, or discipline employees because the employee took leave under this provision.

Tax Credits for Emergency Paid Sick Leave and Paid Family Leave: Payroll tax credits are provided to employers to later recoup payments made for emergency paid sick leave and paid family leave.

Unemployment Insurance: Additional funding is provided to states for processing and paying unemployment insurance benefits.

Contact us

For more information regarding the employment law aspects of the Families First Coronavirus Response Act, please contact Josef Glynias, Paul Pautler or your Husch Blackwell attorney.

Husch Blackwell has launched a COVID-19 response team providing insight to businesses as they address challenges related to the coronavirus outbreak. The page contains programming and content to assist clients and other interested parties across multiple areas of operations, including labor and employment, retailing, and supply chain management, among others.