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Communication on Families First Coronavirus Response Act

The Families First Coronavirus Response Act was signed into law on March 18, 2020, and takes effect on April 2, 2020. Below are key points from the Act for employers who employ less than 500 employees to consider regarding paid leave required under the Act:

- Employers must provide any employee, who has worked at least 30 days for the employer, up to 12 workweeks of emergency family and medical leave ("EFMLA") if the employee cannot work or telework because the employee must care for his/her child because (1) the child's school or place of care is closed due to COVID-19; or (2) the child's care provider is unavailable due to COVID-19.
- The first 10 days of EFMLA leave may be unpaid, thereafter payment must be rate of not less than two-thirds (2/3) of the employee's regular rate of pay but capped at \$200/day and \$10,000 total.
 - Employees may elect to use any other accrued paid leave for their first ten (10) days of EFMLA leave.
- Employers shall restore employees to their same position and seniority after EFMLA leave.
 - Exemption regarding restoration of employee may apply if employer employs less than 25 employees.
- Employers shall provide full-time employees with 80 hours of emergency paid sick leave, and part-time employees with at least the same number of hours of paid sick leave as the average hours the employee works over a 2-week period.
 - Employer cannot require employee to find a replacement to cover his/her shift;
 - Employer cannot require employee to first exhaust other paid leave.
- Employee can use emergency paid sick leave if he/she is unable to work or telework because of any of the following reasons:
 1. Employee is under a federal, state, or local quarantine or an isolation order because of COVID-19;
 2. Health care provider recommended that the employee self-quarantine because of COVID-19;

3. Employee is experiencing symptoms of COVID-19 and is seeking medical diagnosis;
 4. Employee is caring for an individual who is subject to federal, state, or local quarantine, isolation order, or was advised by health care provider to self-quarantine because of COVID-19;
 5. Employee is caring for child whose school or place of care closed, or whose care provider is unavailable because of COVID-19 precautions
 6. Employee is experiencing a condition substantially similar to COVID-19 specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor.
- Employees using emergency sick leave for reasons 1, 2, or 3 above, must be paid the greater of (a) his/her regular rate of pay per hour; (b) the federal minimum wage per hour; or (c) the state minimum wage per hour, with a cap of \$511 per day and \$5,110 total.
 - Employees using emergency sick leave for reasons 4, 5, or 6 above, must be paid the greater of two-thirds (2/3) (a) his/her regular rate of pay per hour; (b) the federal minimum wage per hour; or (c) the state minimum wage per hour, with a cap of \$200 per day and \$2,000 total.
 - Employers shall not discharge, discipline, or discriminate or retaliate against any employee exercising his/her rights under the Families First Coronavirus Response Act.
 - Tax credits and reimbursements may be available to employers paying sick leave.
 - Employers must post notice of leave options under the Act in their workplace. A model notice will be issued by the United States Department of Labor (DOL) soon.

The DOL may announce small business exemptions for employers with less than 50 employees in the near future. Employers should also remember that individuals may otherwise be eligible for traditional FMLA leave if they are individually affected or a family member has COVID-19.