



CLIENT ALERT

How the federal response to COVID-19 affects employers

On March 18, 2020, President Donald Trump signed into law the Families First Coronavirus Response Act (H.R. 6201), an emergency measure to assist Americans during the COVID-19 outbreak. The Act provides many benefits, including two types of temporary employee benefits. All public and private employees are covered by those benefits, unless they work for companies with 500 or more employees.

The Act, which takes effect no later than April 2, 2020, is broken into several parts.

Emergency Paid Sick Leave

An employee is eligible for Emergency Paid Sick Leave if the employee:

- (A) Is subject to a federal, state, or local quarantine or isolation order;
- (B) Has been advised by a doctor to self-quarantine;
- (C) Is experiencing symptoms of COVID-19 and is seeking a diagnosis;
- (D) Is caring for someone in isolation or self-quarantine (as in (A) or (B)); or
- (E) Is caring for a child due to school closure or child care provider unavailability.

Eligible employees can receive two weeks of fully paid time off due to (A), (B), and (C) above. Full-time employees are entitled to 80 hours of paid time, while part-time employees are entitled to the "typical" number of hours they work in a two-week period. The maximum pay under this provision is \$511 per day. Alternatively, if an eligible employee needs to care for a family member (per (D) or (E) above), the employee is entitled to two-thirds of their regular pay for two weeks (maximum \$200 per day).

Paid sick leave earned due to COVID-19 cannot be carried over into next year. Also, paid sick leave shall stop immediately after the need for sick leave is gone (*i.e.*, the day after quarantine ends). An employer may not require that the employee find a replacement or use other accrued paid leave before this Emergency Paid Sick Leave. Employers must conspicuously post a notice of these requirements, which will be provided by the U.S. Department of Labor. Failing to pay employees as required by the Act will subject the employer to penalties, as would terminating an employee who attempts to use Emergency Paid Sick Leave.

Emergency Paid Family Leave

Full-time and part-time employees may also be eligible for paid leave under the Family and Medical Leave Act (FMLA), but in fewer circumstances. If an employee needs to take care of a child due to school closures or child care provider unavailability, the employee is entitled to receive 12 weeks of job-protected leave. Quarantines and illness stemming from COVID-19 do not qualify an employee for this type of leave, even if a family member is the one affected.

Under this provision, the first two weeks of leave will be unpaid, unless an employee uses other available paid leave such as the Emergency Paid Sick Leave described above. After those two weeks, the employer must provide at least two-thirds of the employee's usual pay for the following ten weeks of leave. This amount cannot exceed \$200 per day.

Employees must provide as much notice as practicable given the circumstances. In order to use this Paid Family Leave benefit, an employee must have been employed for 30 days prior to leave. Importantly, the normal requirements of FMLA eligibility (employer with 50 or more employees, employee who worked 1,250 hours in previous year, etc.) do not apply to this temporary FMLA expansion.

Employer Responsibilities

Employers must cover these costs initially, but the federal government will reimburse private employers within three months through a refundable tax credit, with refunds issued if costs exceed payroll tax liability. Expenses will be submitted with estimated quarterly tax payments. The reimbursement will also cover private employers' contributions to health insurance premiums during the leave period.

Local governments, though, are excluded from federal reimbursement for these new types of paid leave. Nevertheless, public entities are considered employers under the Act, which means they must provide paid sick leave and paid family leave to most employees, despite the lack of funding. On the positive side, compensation paid in this manner is not subject to the federal payroll tax (FICA), for either public or private employers.

Importantly for many of our clients, Sections 3105 and 5102 of the Act state that an employer of emergency responders or health care providers can choose to exclude those employees from these new Paid Sick Leave and Paid Family Leave provisions. However, we expect that any employer seeking to take advantage of this exclusion will still face a bargaining demand for the benefits. The Secretary of Labor also may later add an exemption for employers of fewer than 50 people.

Most employees are entitled to reinstatement to the same or equivalent position after returning from expanded FMLA-leave. For employers with fewer than 25 employees, and if their position is permanently eliminated, the employer must only make reasonable efforts to find an equivalent position.

The landscape is changing quickly for employers as we all adjust to the impact of COVID-19. While these leave provisions are temporary, the ramifications could be long-lasting. If you need guidance in making employment decisions in the wake of this law, please call an attorney at Ottosen DiNolfo Hasenbalg & Castaldo, Ltd. for assistance.

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