

Employer Obligations under the New Families First Coronavirus Response Act

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The Families First Coronavirus Response Act (the “Act”) was signed into law on March 18, 2020. The Act provides paid sick and protected job leave for employees who are unable to work because they, or their family members, are impacted by COVID-19. The Act is applicable to employers with fewer than 500 employees. It provides tax credits to employers who are required to provide these enhanced benefits to employees affected by COVID-19. Covered employers should be prepared to implement this relief act’s requirements in short order. The Act will take effect on April 2, 2020.

Set out below is a summary of the key provisions of the Act.

Expansion of the Family and Medical Leave Act (“FMLA”)

The Act temporarily expands the FMLA (effective through the end of 2020) to allow eligible employees to take protected job leave if the employee is unable to work (in person or remotely) due to (i) a need to care for their minor child, (ii) the closure of the child’s elementary or secondary school or place of care, or (iii) the unavailability of a child care provider, all as a result of COVID-19. Eligible employees are those who have been with the employer for at least 30 days.

The first 10 days of leave may be unpaid. Employees can elect to substitute paid leave (accrued vacation, personal and/or medical sick leave) for the unpaid portion. After the first 10 days, the employer is required to pay employees an amount that is no less than two-thirds of an employee’s regular rate of pay for any subsequent absences related to COVID-19. Paid leave is capped at \$200 per day and \$10,000 per employee in the aggregate. Small businesses with fewer than 50 employees may be exempt from the Act’s paid leave requirements if compliance would jeopardize its business.

Expansion of Paid Sick Leave

The Act provides for six additional grounds to qualify for paid sick leave related to COVID-19. These six grounds fall into two general categories – circumstances affecting the employee personally and circumstances affecting the employee’s dependents. An employer must provide paid sick leave taken by an employee at two-thirds of the employee’s regular rate if the employee:

1. is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine as a result of concerns related to COVID-19;

3. is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. is caring for someone who falls under grounds (1) or (2);
5. is caring for a child because the child's school or place of care has been closed due to COVID-19 precautions; and
6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Employees seeking paid sick leave due to circumstances arising under categories 1– 3 above are entitled to their regular rate of pay or the minimum wage, whichever is greater, up to a maximum of \$511 per day and \$5,110 in the aggregate. Employees who require leave due to circumstances affecting others, categories 4 – 6 above, are only entitled to two-thirds of that amount, up to a maximum of \$200 per day, and \$2,000 in the aggregate.

Employees are entitled to this leave regardless of how long they have been working for their employer, and the employer cannot force employees to use other paid leave before using the paid sick leave provided by the Act. An employer may not fire, discipline, or otherwise discriminate against an employee for taking sick leave as provided by the Act or filing a complaint regarding the same. Employers are required to post notice to employees of their right to paid sick leave. The DOL will be publishing a model notice by March 25, 2020.

Tax Credits for Employers Impacted by the Expansion of Paid Leave

Employers who are required to provide family and medical leave and paid sick leave under the Act will be eligible to receive refundable tax credits in order to offset the burden of providing such leave. At the end of each quarter, employers will be given a tax credit equal to the full amount of the payments made pursuant to the Act in such quarter. Credits will not be given for payments an employer elects to make which are in excess of those required by the Act.

Conclusion

The COVID-19 situation is changing rapidly, and the legal landscape is becoming more complex as regulators and lawmakers respond to it. The employment team at Cohen & Gresser will continue to review and summarize new laws and guidance for employers to consider when responding to COVID-19 challenges and is prepared to counsel clients on all aspects of their compliance with this changing landscape.

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