



Employment Alert: Coronavirus Response Act Provides for Paid Sick Leave and Paid FMLA Leave

March 18, 2020

The federal Families First Coronavirus Response Act, passed today and effective within 15 days, includes two provisions aimed at reducing the financial impact of the Coronavirus pandemic on workers: Emergency Paid Sick Leave and Public Health Emergency Leave, an FMLA expansion that includes paid leave. Both provisions apply only to employers with fewer than 500 employees, and certain covered public employers, and are available only under specific circumstances.

Emergency Paid Sick Leave

The **Emergency Paid Sick Leave** provision requires covered employers to make up to 80 hours of paid sick leave available for certain Coronavirus-related absences, in addition to any current paid time off provided by the employer. Emergency Paid Sick Leave is available to an employee who is unable to work or telework because the employee is (i) subject to a government quarantine or isolation order; (ii) has been advised by a health care provider to self-quarantine; or (iii) is experiencing symptoms of COVID-19 and is seeking a medical diagnosis. This Leave is paid at the employee's regular rate of pay, capped at \$511 per day.

Emergency Paid Sick Leave is also available to an employee who is unable to work or telework because the employee is (i) caring for an individual who is subject to a government quarantine order or recommendation; (ii) caring for a son or daughter whose school has closed or daycare provider is unavailable due to Coronavirus precautions; or (iii) absent due to substantially similar conditions as declared by the U.S. Secretary of Health and Human Services. Leave for these reasons is paid at two-thirds (2/3) of the employee's regular rate, capped at \$200 per day.

Employees are allowed to use Emergency Paid Sick Leave beginning with the first day of employment. An eligible employee is entitled to use the Leave before any otherwise-available paid leave provided by the employer, and the employer may not require the exhaustion of employer-provided leave before accessing the Emergency Paid Sick Leave. The amount of leave may be pro-rated for part-time workers. Unused leave does not carry over to 2021 and does not have to be paid out upon the employee's separation from employment. Employers are required to post a notice regarding the availability of this Emergency Paid Sick Leave, which will be provided by the U.S. Department of Labor (DOL).



Employers with fewer than 50 employees may be eligible for exemption because of financial hardship from the requirement of paid leave for school or daycare closing, in accordance with regulations that will be forthcoming from the DOL. Also, an employer of an employee who is a health care provider or an emergency responder may elect to exclude those employees from using Emergency Paid Sick Leave.

Paid FMLA Leave

The **FMLA Expansion (Public Health Emergency Leave)** adds a new category of FMLA-covered leave: leave due to a "qualifying need because of a public health emergency". A "qualifying need" is defined as: leave when an employee is unable to work, or telework, due to a need to care for a son or daughter (under 18 years of age) due to a Coronavirus pandemic-related closure of an elementary or secondary school or daycare.

Eligibility for up to 12 weeks of Public Health Emergency Leave only requires that the worker has been employed 30 calendar days, not one year as with other types of FMLA leave. Also, this leave is available even if the employee works at a site with fewer than 50 employees, unlike other FMLA leaves.

A significant difference from other FMLA-qualifying leaves is the requirement that a portion of the Public Health Emergency Leave must be paid by the employer. The first 10 days of this Public Health Emergency Leave is not paid. The employee may choose to run otherwise-available paid leave concurrent with the first 10 days of leave. After 10 days, the remainder of the leave is paid at two-thirds (2/3) of the employee's regular rate. However, this paid leave component is capped at \$200 per day and \$10,000 total per employee.

Employers of healthcare workers and emergency responders can choose to exclude those employees from this leave. In addition, as with Emergency Paid Sick Leave, employers with fewer than 50 employees may be eligible for exemption because of financial hardship as will be addressed by forthcoming regulations.

The Act provides for certain payroll tax credits to help offset costs for employers who pay out these new leave benefits. Both the Emergency Paid Sick Leave and the Public Health Emergency Leave are scheduled to expire December 31, 2020.

If you have questions about the applicability or operation of these new paid leave provisions, please contact Brian Woolley, Megan Anderson or your regular Lathrop GPM contact.