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Employment Law & Human Resources Solutions

Paid Family Leave and Emergency Sick Leave to Take Effect

Yesterday, March 18th, the federal *Families First Coronavirus Response Act* (H.R. 6201) was signed into law. It is a revision of the bill passed by the U.S. House of Representatives last week. The Act will provide:

- Paid FMLA.
- Paid Emergency Leave.
- Enhanced unemployment insurance.
- Free coronavirus testing.
- Additional funding for nutritional programs.
- Protections for health care workers and employees responsible for cleaning at-risk places.
- Additional federal funds for Medicaid.

While the date the law is to take effect hasn't been announced yet, the now passed public act must take effect by April 2, 2020.

Paid Family Leave

The law will apply to smaller employers and will provide federal FMLA leave time to employees with short term service with the employer. Employers with fewer than 500 employees will be considered a "covered employer," however the U.S. Department of Labor may exempt employers with fewer than 50 employees. An "eligible employee" is one who has worked with the employer for 30 days or more.

The law is providing two new qualifying events under the FMLA and employers will be obligated to provide pay for them. Time off is provided for employees who are unable to work or work remotely due to the need to care for a child whose school is closed or childcare provider is unavailable due to a coronavirus public emergency. An eligible employee will be entitled to use any or all of his or her FMLA time for these purposes.

Pay

The first 10 days of the leave are unpaid. However, like the existing FMLA, an employee may use any vacation, PTO or other forms of pay, as part of the 10-day unpaid period.

After the 10 days, an employer must provide an employee with at least 2/3 of the employee's regular rate of pay to a maximum of \$200 per day or \$10,000 in the aggregate.

The employee has a right to reinstatement into his or her former position or one which is substantially similar; however, employers with fewer than 25 employees are not obligated to reinstate if the employee's position no longer exists due to business conditions occasioned by the coronavirus.

Emergency Paid Sick Leave Act

The law also provides 80 hours of paid sick time for full-time employees, and pro-rated leave for part-timers who must self-quarantine and who cannot work remotely. This provision applies to employers with fewer than 500 employees and public agencies.

The provision applies to any employee regardless of length of service. Emergency leave time is available under the following circumstances and with the following pay:

1. The employee is subject to a state, federal or local quarantine order;

Pay: Greater of regular pay rate or minimum wage capped at \$511.00 per day and \$5,110.00 in the aggregate.

2. The employee was advised by his or her healthcare provider to self-quarantine;

Pay: Greater of regular pay rate or minimum wage capped at \$511.00 per day and \$5,110.00 in the aggregate.

3. The employee has symptoms of the coronavirus;

Pay: Greater of regular pay rate or minimum wage capped at \$511.00 per day and \$5,110.00 in the aggregate.

4. The employee is caring for a quarantined person;

Pay: 2/3's of the employee's regular pay rate capped at \$200.00 per day and \$2,000 in the aggregate.

5. The employee is caring for a minor child whose school or place of care has been closed due to the virus;

Pay: 2/3's of the employee's regular pay rate capped at \$200.00 per day and \$2,000 in the aggregate.

6. The employee is experiencing any other substantially similar condition related to the coronavirus;

Pay: 2/3's of the employee's regular pay rate capped at \$200.00 per day and \$2,000 in the aggregate.

An employee may use paid sick leave before using emergency leave, however, the employer may not require the employee to do so.