



SUMMARY OF EMPLOYERS' PAID LEAVE OBLIGATIONS UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The President signed into law the Families First Coronavirus Response Act on March 18, 2020. This summary sets forth employers' obligations under the Act.

Generally

Although the Act contains various provisions not applicable to the workplace, such as a prohibition on insurance plans charging a co-payment for coronavirus testing, two components of the Act pertain to paid leave covered employers must provide to employees in certain situations. First, employers must provide two weeks of paid sick leave to employees who must miss work for certain reasons pertaining to the current coronavirus pandemic. Second, employers must provide partially-paid FMLA leave to employees to care for a child whose school or care provider is closed due to public health concerns. The details of each paid leave provision are set forth below.

Applicability

Both paid leave provisions apply to employers with fewer than 500 employees and certain public employers.

The Secretary of Labor *may* exempt employers with fewer than 50 employees from one of both of the paid leave provisions if they would jeopardize the viability of the business as a going concern. Such action would have to be taken through the regulatory process. As of now, employers with fewer than 50 employees are covered.

Effective Dates

The Act will go into effect "no later than" Thursday, April 2, 2020, 15 days after the date the President signed it into law. The requirements of the Act will expire on December 31, 2020.

Paid Sick Leave

Full-time employees are entitled to 80 hours of paid sick leave, while part time employees are entitled to the average number of hours they work over a two-week period, for absences occasioned by the following:

- The employee is subject to a quarantine or isolation order;
- The employee has been advised by a health provider to self-quarantine;
- The employee is experiencing coronavirus symptoms and seeking a medical diagnosis;
- The employee is caring for an individual who is subject to a quarantine or isolation order or has been advised by a medical provider to self-quarantine;
- The employee is caring for his or her child if the child's school or daycare has been closed, or the child's normal care provider is unavailable due to coronavirus precautions; or

- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor.

Under this provision, employees are to be paid at 100% of their normal rate of pay, subject to the following caps: \$511 per day/\$5,110 total for absences described in the first three bullet points above; \$200 per day/\$2,000 total for absences described in the latter three bullet points. Additional provisions include:

- Employers may not require an employee taking paid sick leave to find a replacement for him or her;
- All employees are eligible for paid sick leave, regardless of their length of service with the employer;
- Paid sick leave under the Act is not available for absences due to reasons not described above, such as absences occasioned by the employee's generalized concerns about being out in public;
- Employers may require employees to follow "reasonable" notice procedures after the first workday or portion thereof that an employee receives paid sick leave.
- Paid sick leave under the Act is *in addition to* any other paid time off benefits already given to employees. Employers may not require an employee to use other available paid leave before utilizing paid sick leave under the Act.

Family and Medical Leave Due to Coronavirus-Related Child Care

The Act also amends the Family and Medical Leave Act to provide for partially-paid FMLA leave in certain coronavirus-related circumstances. It should be noted that this provision of the Act applies – as of now – to employers with fewer than 50 employees who would not normally be covered by the FMLA. Employees must, however, have been with the employer for at least 30 days to be eligible to take leave under this provision.

An employee may take job-protected FMLA leave (up to 12 weeks) if the employee "is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency."

The first ten days of FMLA leave are unpaid, but the employee may elect to substitute a paid leave benefit available to the employee, such as vacation time, personal leave, or other medical or sick time (including, presumably, paid sick time as provided for by the Act), for the first ten days. Subsequently, employees are entitled to two-thirds their normal rate of pay, subject to a cap of \$200 per day/\$10,000 total.

With limited exceptions, an employee who takes FMLA leave for the reason described above is entitled to the normal job restoration provisions of the FMLA.

If you have any questions or wish to discuss the Act, please feel free to call or e-mail Keith L. Hammond, Esq., at (407) 730-9909 or keith@hammondlawcenter.com.