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The information in this article is current through March 18, 2020. However, given the fast changing nature of the nation's response to the COVID-19 pandemic, we acknowledge that facts will change and invite you to visit our [pandemic site](#) where we maintain up-to-date information.

Families First Coronavirus Response Act Becomes Law

The House and Senate have passed and President Trump is expected to sign the Families First Coronavirus Response Act (the Act) into law. The Act, which passed with bipartisan support, seeks to ensure the safety of Americans and ease the economic toll of the 2019 Novel Coronavirus (COVID-19) by strengthening the social safety net. A summary of the most important provision for employers follows.

Emergency Paid Sick Leave

For many employers and their employees, the most significant provision is the introduction of Emergency Paid Sick Leave. This Act requires employers with fewer than 500 employees and government employers to provide employees who are unable to work or telework with two weeks of paid sick leave, paid at the employee's regular rate, due to one of the following reasons:

- (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- (4) The employee is caring for an individual who is subject to a quarantine or isolation order as described in (1), above, or has been advised as described in (2), above.
- (5) The employee is caring for a son or daughter whose school or place of care has been closed, or the child care provider is unavailable, due to COVID-19 precautions.
- (6) 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 the bill, an employer's obligations are limited to paid leave of \$511 per day (\$5,110 in the aggregate) where leave is taken for reasons (1), (2), and (3) above (i.e.,

an employee's own illness or quarantine), and \$200 per day (\$2,000 in the aggregate) where leave is taken for reasons (4), (5), or (6) (i.e., care for others or school closures).

Full-time employees are entitled to two weeks (80 hours) of leave and part-time employees are entitled to the typical number of hours that they work in a typical two-week period. The Act allows employers to exclude employees who are health care providers or emergency responders from this coverage.

Under the Act, Emergency Paid Sick Leave expires on December 31, 2020 and any unused paid leave granted by the Act does not carry over into 2021.

Emergency Family and Medical Leave Expansion Act

The Act also temporarily amends the Family and Medical Leave Act (FMLA) to provide employees of employers with fewer than 500 employees and government employers who have been on the job for at least 30 days with the right take up to 12 weeks of job-protected leave for Public Health Emergency Leave.

To qualify for Public Health Emergency Leave, an employee must be unable to work or telework due to a need to care for the son or daughter under 18 years of age because the child's 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. A "public health emergency" is defined to mean "an emergency with respect to COVID-19 declared by a Federal, State, or local authority." Note that an employee must provide advance notice as soon as practicable of a need for leave under this temporary provision when the need for leave is foreseeable.

The first ten days of leave may be in the form of Emergency Paid Sick Leave (described above) or an employee may choose to substitute accrued vacation leave, personal leave, or other medical leave during this period, but an employer may not require an employee to do so. An employee may also take unpaid leave for the first ten days. After ten days of leave, employers must continue paid Public Health Emergency Leave at a rate of no less than two-thirds of the employee's usual rate of pay. The Act limits the amount of required paid leave to no more than \$200 per day and \$10,000 in total.

As with Emergency Paid Sick Leave, the Act provides that an employer may exclude employees who are health care providers or emergency responders from Public Health Emergency Leave coverage.

As with traditional FMLA leave, this leave is job-protected, which means that an employer must return the employee to the same or equivalent position upon his or her return to work. However, there is an exception to the job protection provisions for employers with fewer than 25 employees if the employee's position does not exist after FMLA leave due to an economic downturn or other operating conditions that affect employment caused by the COVID-19 pandemic.

Emergency Family and Medical Leave takes effect 15 days after President Trump signs the Act and will remain in effect for one year from the date of the President's signature.

The Secretary of the Department of Labor has the authority to issue regulations to: (a) exclude certain health care providers and emergency responders from the list of those employees eligible for leave; and (b) exempt small businesses with fewer than 50 employees where the imposition of these requirements would jeopardize the viability of the business as a going concern. However, how and when businesses with fewer than 50 employees will be exempt is currently unclear. Additional regulations on this issue are expected.

Tax Credits for Paid Sick and Paid Family and Medical Leave

Payroll Credit for Required Paid Sick Leave. To assist employers who need to fund emergency paid sick leave, the Act provides a refundable tax credit equal to 100 percent of qualified paid sick leave wages paid by an employer for each calendar quarter. The tax credit is allowed against the tax imposed by Internal Revenue Code section 3111(a) (the employer portion of Social Security taxes).

For tax purposes, the Act distinguishes among reasons an employee is paid qualified sick leave wages. For employees who are subject to a quarantine or are seeking diagnosis or treatment with respect to COVID-19, the amount of qualified sick leave wages taken into account for each employee is capped at \$511 per day. For amounts paid to employees for the other qualifying reasons for paid sick leave (e.g., to take care of a child whose school had been closed), the amount of qualified sick leave wages taken into account for each employee is capped at \$200 per day. The aggregate number of days taken into account per employee may not exceed the excess of ten over the aggregate number of days taken into account for all preceding calendar quarters.

If the credit exceeds the employer's total tax liability under section 3111(a) for all employees for any calendar quarter, the excess credit is refundable to the employer. To prevent a double benefit, no deduction is allowed for the amount of the credit. In addition, no credit is allowed with respect to wages for which a credit is allowed under Code section 45S. Employers may also elect to not have the credit apply.

Payroll Credit for Required Paid Family Leave. To assist employers who need to fund paid Public Health Emergency Leave, the Act also provides a refundable tax credit equal to 100 percent of qualified Public Health Emergency Leave wages paid by an employer for each calendar quarter. The tax credit is allowed against the tax imposed by Code section 3111(a) (the employer portion of Social Security taxes). Qualified wages are wages required to be paid by the Emergency Family and Medical Leave Expansion Act.

The amount of qualified family leave wages taken into account for each employee is capped at \$200 per day and \$10,000 for all calendar quarters. If the credit exceeds the employer's total liability under Code section 3111(a) for all employees for any calendar quarter, the excess credit is refundable to the employer.

To prevent a double benefit, no deduction is allowed for the amount of the credit. In addition, no credit is allowed with respect to wages for which a credit is allowed under Code section 45S. Employers may again elect to not have the credit apply

Any wages paid for emergency paid sick or emergency family and medical leave under the Act are not considered wages for purposes of Code section 3111(a).

The tax credits for emergency paid sick leave and emergency paid family leave will be available through December 31, 2020 and will apply on any day selected by the Secretary of the Treasury (but no later than 15 days after the Act is signed into law).

Other Relevant Provisions

Coverage of Testing for COVID-19. Private health plans must provide coverage for COVID-19 diagnostic testing, including the cost of a provider, urgent care center and emergency room visits in order to receive testing, at no cost to the consumer and without prior authorization or other medical management requirements.

TRICARE, Coverage for Veterans, Coverage for Federal Workers and Native Americans. The Act also ensures that individuals enrolled in TRICARE, covered veterans, and federal workers have coverage for COVID-19 diagnostic testing without cost-sharing.

The intent of this article is to provide general information on employee benefit issues. It should not be construed as legal advice and, as with any interpretation of law, plan sponsors should seek proper legal advice for application of these rules to their plans.