New Emergency Paid Leave Requirements

“Families First Coronavirus Response Act”

Signed by President Trump: March 18, 2020
Effective Date: April 3, 2020
Families First Coronavirus Response Act

- **Coverage**: Require employers with fewer than 500 employees to provide emergency paid sick leave and family leave to certain employees directly impacted by COVID-19.

- **Tax Credits**: Each quarter, employers are entitled to a fully refundable tax credit equal to 100% of the wages paid under either leave provision.

- Put political and popular pressure on “large” employers to provide paid leave voluntarily (with no reimbursement from the federal government).
Emergency Paid FMLA Leave

- **What it does?** Requires 12 weeks of job-protected FMLA leave for employees to care for children if schools or daycares are closed because of a public health emergency and they are unable to work or telework.

- **Who is eligible?** Employees working for at least 30 calendar days.

- **Rate of Pay**
  - First 10 days are unpaid.
  - Employees may use accrued paid personal or sick leave during the first 10 days, but employers may not require them to do so.
  - After 10 days, employees are paid at 2/3 of their regular rate.
  - Capped at $200 per day and $10,000 in the aggregate.
Emergency Paid Sick Leave

- **What it Does.** Requires employers to provide 2 weeks (80 hours) of paid leave to full-time employees and an amount equal to a 2-week average for part-time employees because:
  - Quarantine or isolation ordered by government
  - Self-quarantine recommended by a health care provider
  - Experiencing COVID-19 symptoms and seeking medical diagnosis
  - Caring for an individual subject to quarantine order or self-quarantine
  - Caring for children if schools are closed or their caregiver is unavailable because of a public health emergency, or
  - Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services
Emergency Paid Sick Leave

- **Eligibility.** All employees, regardless of length of employment

- **Rate of Pay.** The higher of the employee’s regular rate or the federal or local minimum wage
  - Payments are capped at $511 per day and $5,110 in the aggregate.
  - Employees absent to care for a sick family member or a child unable to attend school are compensated at 2/3 of the rate they would otherwise receive, capped at $200 per day and $2,000 in the aggregate.
Emergency Paid Sick Leave

- **Employers with Existing Leave Policies.** This paid sick leave is in addition to whatever sick leave is already offered by the employer (including subject to state or local requirements).
  - Employers may not require an employee to use other paid leave provided by the employer before the employee uses the paid sick time under the Act.
  - But nothing prohibits employers from changing their leave programs after the bill is enacted.
Exemptions and Notices – for Both

Exemptions

- Employers of employees who are healthcare providers or emergency responders may elect to exclude such employees from the paid leave (these terms aren’t defined).

- DOL is empowered to exempt small businesses with less than 50 employees if complying would “jeopardize the viability of the business as a going concern.” The DOL will have to provide regulatory guidance on this possible exemption.
Pelosi's Phase 3 steps to expand the emergency leave mandate, include:

- Ensuring workers who are sick can access longer term leave if short- and medium-term leave is exhausted;
- Increasing scope of allowable uses of family and medical leave;
- Expanding refundable tax credits to provide support for self-employed workers, workers in the gig economy or other workers with non-traditional employment; and
- Ensuring that first responders and health care workers have access to the paid leave that they need.