

# 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.

# Families First Coronavirus Response Act

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.