

March 20, 2020

## COVID-19 Emergent Paid Family/Sick Leave Laws Passed and What This Means to Your Business

On Wednesday night, March 18, President Trump signed the Families First Coronavirus Response Act (the Act). This law provides employees with paid family leave and paid sick leave if they (or their families) are affected by COVID-19. Below are the highlights.

### *Covered Employers*

The new laws apply only to employers with fewer than 500 employees.

### *Emergency Family and Medical Leave Expansion*

The Act amends the Family and Medical Leave Act (FMLA) to cover, as a qualifying need, issues related to a public health emergency. This amendment is temporary (extending through December 31, 2020), and is *limited to* situations where employees are unable to work (or telework) because they need to care for a child (under 18) due to school or child care being closed/unavailable in light of the COVID-19 emergency.

Employees will be entitled to additional family leave as follows:

- The first 10 days of leave will be unpaid. During this unpaid period, employees may elect to substitute any paid time off they have accrued and not used under any other company policy.
- After the first 10 days, employees will be entitled to a paid leave for the remaining FMLA leave period (total entitlement of 12 weeks) at two-thirds of their regular rate of pay. For exempt employees, this means two-thirds of their regular salary. For nonexempt employees, this means pay for two-thirds of the number of hours the employees are normally scheduled to work. If the employee works irregular hours, employers must take the average of their hours over the past six months, or, for a more recent employee, use the "reasonable expectation" of hours at the time of hire.
- There is a *cap* to the amount of paid family leave: \$200 per day and \$10,000 in the aggregate.

Other significant changes to the FMLA included in the Act are the following:

- Employees become eligible for leave if they have been employed for at least 30 days.
- The normal FMLA obligation to restore employees to their former (or comparable) position will not apply to employers with fewer than 25 employees (subject to specific conditions).
- Employees must provide notice of the need for leave as soon as "practicable."
- Employers that cannot restore an employee to a comparable job after this leave period will need to make efforts to contact the former employee for a *one-year* period if an equivalent position subsequently opens.
- There are special provisions for companies that have union employees and are part of multi-employer bargaining units.

These amendments will be effective April 1, 2020.

#### *Emergency Paid Sick Leave*

The Act also provides employees with emergency sick leave pay that is specific to COVID-19.

Employees will be entitled to paid sick leave for the following reasons:

- The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
- The employee has been advised by a health care provider (HCP) to self-quarantine due to concerns related to COVID-19.
- The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in subparagraph (2).
- The employee is caring for his or her child if the child's school or place of care has been closed, or the child's care provider is unavailable, due to COVID-19 precautions.
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, except that an employer of an employee who is an HCP or an emergency responder may elect to exclude such employee from application of this provision.

The amount of emergency paid sick leave is as follows:

- Full-time employees are entitled to 80 hours.
- Part-time or hourly employees are entitled to the average number of hours the employee works in a two-week period.
- There is *no carryover* to the next year.
- Paid sick leave is available immediately, regardless of how long the employee has worked for the employer.
- Companies *may not* require an employee to use other paid time off before using paid sick leave under the Act.
- Employees who take paid sick leave for their *own conditions* are paid up to a maximum of \$511 per day and \$5,110 in total. Employees who take paid sick leave to care for others (or to care for a child whose school or care provider is closed) are paid at two-thirds the regular rate of pay the employee would otherwise receive, up to \$200 per day and \$2,000 in total.

Other significant requirements of the law include the following:

- Every company must post at every company facility a notice regarding these leave provisions (a model of which should be available within seven days).
- No company may retaliate against any employee who takes leave under the Act.
- Violations will be treated as violations under the federal wage laws (e.g., the Fair Labor Standards Act).

These provisions will also be effective April 1, 2020, and will expire December 31, 2020.

#### *Tax Credits for Paid Sick and Paid Family and Medical Leave*

Finally, the Act allows employers to take a 100 percent tax credit for the payments made under the FMLA and paid sick leave provisions as long as certain qualifications are met. Companies should consult with their accountants to get the full benefit of these credits.

#### *In Conclusion*

These new laws are being implemented on short notice and may have a significant impact on your business. Day Pitney is available to help guide you through this challenge. If you have any questions on the above and how it may affect you, please contact us.

**UPDATED:** *On March 18, Governor Murphy signed New Jersey's Clean Stormwater and Flood Reduction Act into law as P.L. 2019, c. 42. The tax involved may be established on a town-by-town basis so property owners should take notice as to whether their individual municipality creates a stormwater utility and enacts a tax to support it.*

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For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our [COVID-19 Resource Center](#).

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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