



CLIENT ALERT

COVID-19 EMERGENCY: NEW FEDERAL PAID SICK TIME AND PAID LEAVE REQUIREMENTS; UNEMPLOYMENT WAITING PERIOD WAIVED

The Families First Coronavirus Response Act (the “Act”), signed by President Trump on March 18, 2020, provides for two new categories of leave for employees affected by the current public health emergency. The new employee benefits created by the Act include a paid sick leave benefit and a category of paid leave created by expanding the Family & Medical Leave Act (FMLA). Employers need to understand the terms of these benefits before the April 2, 2020 effective date.

Emergency Paid Sick Leave

One section of the Act requires employers to provide two weeks of paid sick leave to employees who are unable to work onsite or remotely because:

- They are subject to a government or health care provider’s quarantine or isolation order related to COVID-19;
- They are experiencing symptoms of COVID-19 and are seeking a medical diagnosis;
- They are caring for an individual (including but not limited to a family member) who is subject to a government or a health care provider’s quarantine or isolation order; or
- They are caring for a child whose school is closed or whose regular care provider is unavailable due to COVID-19.
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This paid sick leave provision applies to all private employers with fewer than 500 employees, and certain public sector employers. Notably, health care providers and first responders may be excluded from coverage. How this potential exemption may be implemented is an important open question.

Employees are entitled to their full regular rate of pay (capped at \$511 per day and \$5,110 in the aggregate) during this leave, except when the leave is taken to care for another individual who is quarantined or a child whose school is closed or for whom care is unavailable, in which case the pay must be at least two-thirds of the employee’s regular rate (and capped at \$200 per day and \$2,000 in the aggregate).

New Paid Leave Under FMLA

Expanding the Family and Medical Leave Act to address the current emergency, the Act broadens the circumstances that qualify for FMLA leave. Like the paid sick leave provision of

the Act, the expanded FMLA coverage also applies only to private sector employers with fewer than 500 employees, plus covered public employers. However, employers with fewer than 50 employees will be able to apply for an exemption if compliance would jeopardize the viability of the business as a going concern. The standards and process for seeking an exemption are another important open question that should be addressed in the implementing regulations. And, as with the paid sick leave discussed above, health care providers and first responders may be excluded from coverage.

The FMLA is expanded as follows:

- Employees employed for at least 30 days will be eligible for leave if they are unable to work or work remotely due to the need to care for a child under 18 years old as a result of closure of the child's school or unavailability of a regular child care provider.
- The first two weeks of this leave may be unpaid (but the paid sick leave discussed provisions above may apply). After two weeks, the employer must provide paid leave at a rate of no less than two-thirds of the regular rate of pay (not to exceed \$200 per day or \$10,000 in the aggregate).
- Employees may choose to substitute paid leave (e.g. vacation, PTO, or the new emergency paid leave described above) for the two weeks of unpaid FMLA leave, but employers may not require such substitution. Both the new paid sick leave and the FMLA amendments take effect on April 2, 2020 and expire on December 31, 2020.

Tax Credits

To defray the costs of the paid sick leave and expanded FMLA benefits, employers may claim a credit against its payroll taxes. Also, compensation paid under these new emergency provisions will not be subject to the usual 6.2% social security payroll tax.

Notices

Employers will be required to post notices about the new benefits under the Act, and the Department of Labor is expected to issue a model posting soon. For employees working remotely, it is recommended that the postings be circulated electronically.

Unemployment Benefits Waiting Period Eliminated

On the state level, Governor Baker has waived the one-week waiting period for unemployment benefits, and the Division of Unemployment Insurance is expected to soon be announcing additional steps to address the current emergency.

Additional Developments

There will likely be additional legislation and rulemaking on the federal and state levels addressing the COVID-19 emergency. Krokidas & Bluestein will continue to monitor these changes and we are available to advise clients during this challenging period.

If you have questions about employers' obligations and best practices in light of COVID-19, please contact Attorneys Paul Holtzman (pholtzman@kb-law.com), Jill Brenner Meixel (jmeixel@kb-law.com), Allison Belanger (abelanger@kb-law.com) and Brian Richichi (brichichi@kb-law.com).

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