

COVID-19 – Update on Paid Sick & Family Leave

As you know, the circumstances surrounding the Coronavirus (COVID-19) are evolving rapidly. We are continuing in our efforts to keep you updated on the situation as information becomes available.

On March 18, 2020 **the Families First Coronavirus Response Act** was signed into law. Under this new legislation, the Family Medical Leave Act (FMLA) now provides refundable quarterly payroll tax credits and requires private employers with fewer than 500 employees to provide up to 10 days of paid sick leave to employees who are unable to work due to reasons related to Covid-19. ***Further guidance issued clarifies that employers may reduce their payroll tax deposits by the amount of the payroll tax credits*** rather than paying in full and waiting to get a refund after filing their quarterly payroll tax returns.

The Act contains two main components. The first, Emergency Paid Sick Leave Act, provides paid sick time to employees unable to work due to COVID-19 related reasons. The second is the Emergency Family and Medical Leave Expansion Act, which provides for employees who are unable to work due to a need to care for a minor child whose school or day care has been closed as a result of a public health emergency.

The U.S. Department of labor has summarized the key points of the Families First Coronavirus Response Act that will become effective on April 2, 2020 and expire on December 31, 2020. We are attaching a copy of this summary for you in this email entitled ***“Paid Leave Guidance for Employers”***.

There are six reasons listed for employees to qualify for expanded family and medical leave if the employee is unable to work or telework, as follows:

1. Employee is subject to Federal, State or local quarantine or isolation order related to COVID-19;
2. Employee has been advised by a health care provider to self-quarantine related to COVID-19;
3. Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. Employee is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. Employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. Employee is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

For sick pay (leave reasons 1, 2, or 3), employees should be paid at their regular rate of pay, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period). Sick pay is available up to 80 hours.

For leave reasons 4 or 6, employees taking leave shall be paid at 2/3 their regular rate, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

For family leave to care for a child (leave reason 5); the first ten (10) days of absence are at the employee's expense. Employees may utilize their vacation pay and other paid absences during this period. Thereafter, employees are to be paid at 2/3 their regular rate up to \$200 per day and \$12,000 in the aggregate over a 12 week period.

The Families First Coronavirus Response Act applies to all employers with fewer than 500 individuals, and employers may not require employees to exhaust all of their paid time off (accrued sick leave, vacation time or personal time) prior to availing themselves of benefits under the law. The law does however provide the possibility of exemptions for employers under 50 employees where it "would jeopardize the viability of the business" but more specific guidance on the exemptions has yet to be provided.

New York State Legislation

New York State has also promulgated its own requirements for businesses in response to the COVID-19, guaranteeing job-protected paid leave to workers who are subject to an order of mandatory or precautionary quarantine or isolation for COVID-19, issued by the state of New York, the Department of Health, local board of health, or any government entity duly authorized to issue such order, or whose minor dependent child is under such an order.

NYS' leave available to employees if they are subject to an order of mandatory or precautionary quarantine or isolation depends on the size of your business as of January 1, 2020, and/or whether you are a private or public employer, as follows:

- **Small businesses** with 10 or fewer employees as of January 1, 2020, and that had a net annual income less than \$1 million last year must provide your employees with:
 - Job protection for the duration of the order of quarantine or isolation
 - Your employees can access benefits through your Paid Family Leave and disability benefits policy, for the duration of the order of quarantine or isolation.
- **Medium businesses** with 11-99 employees as of January 1, 2020, and smaller employers (1-10 employees) that had a net annual income greater than \$1 million last year must provide your employees with:
 - Job protection for the duration of the order of quarantine or isolation
 - At least 5 days of paid sick leave.
 - Employees can then access benefits through your Paid Family Leave and disability benefits policy.
- **Large businesses** with 100 or more employees as of January 1, 2020, must provide your employees with:
 - Job protection for the duration of the order of quarantine or isolation
 - Up to 14 days of paid sick leave.

