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Families First Coronavirus Response Act

By Chip Paternoster

Over the last several days and weeks, the coronavirus has brought dramatic changes to how we live and do business. While we're all being inundated with information from the never-ending and always-changing news cycle, I wanted to provide our friends and clients with important information about the new legislation being passed in response to the challenges we face from COVID-19, to keep you apprised of potential new obligations that affect our businesses.

Status of new laws – the Families First Coronavirus Response Act.

On Wednesday, March 18, 2020, the President signed into law the Families First Coronavirus Response Act (the "FFCRA"). This legislation was first passed by the United States House of Representatives on March 14, 2020, then subject to modifications in the House and Senate before being passed and sent to the President for signature yesterday. It will go into effect in 15 days. While we are still analyzing and assessing the newly-passed law, here's what we know right now:

1. What does it do?

The new law does two primary things: [1] it provides for a paid sick leave benefit; and [2] it amends the Family Medical Leave Act (the "FMLA") to permit an employee who is unable to work to care for a child under 18 if the child's school or care facility has been closed due to a "public health emergency."

2. Who qualifies? Employers

The FFCRA covers all companies with up to 500 employees. Unlike the FMLA, there is no requirement in the new law that a company have 50 employees to qualify. The new law does grant the Department of Labor broad authority to exempt from the paid family leave requirement employers with fewer than 50 employees, if providing the benefit would jeopardize the viability of the business. At this time, it is unclear whether the Secretary of Labor will use this authority to exempt employers with less than 50 employees.

3. Who qualifies? Workers

To qualify under the new law, an employee must meet one of the following descriptions:

- the employee is subject to a federal, state, or local quarantine or isolation order related to Covid-19;
- the employee has been directed by a health care provider to self-quarantine due to concerns related to Covid-19;
- the employee is experiencing symptoms of Covid-19 and seeking medical diagnosis;
- the employee is caring for an individual who is subject to a federal, state, or local quarantine order, or the individual has been advised to self-quarantine due to concerns related to Covid-19;
- the employee is caring for the employee's son or daughter, if the child's school or child care facility has been closed or the child's care provider is unavailable due to Covid-19 precautions; or
- the employee is experiencing any other substantially similar condition specified by Health and Human Services in consultation with the Department of the Treasury and the Department of Labor.

4. What are the benefits?

Under normal circumstances, leave under the FMLA is unpaid. Under the newly-passed FFCRA, covered employers must immediately make available 80 hours of paid sick leave for full-time qualifying employees. This paid sick leave is calculated at the employee's regular rate, but is capped at \$511 per day and \$5,110 total.

Where the employee is taking leave to act as a caregiver, the rate of pay is calculated based on two-thirds of the employee's regular rate of pay and is limited to \$200 per day and \$2,000 total.

5. Other important issues.

While employers must pay the benefits, the FFCRA provides that an employer can receive tax credits for 100 percent of what they pay out to employees, with the above-noted limits.

6. Effective date.

The new law will become effective on April 2, 2020 (15 days after enactment), and will remain in place through December 31, 2020.

Other workplace guidance

In recent days, the State of Oregon Employment Department has provided a series of Questions and Answers for both employees and employers on COVID 19 related business layoffs, closures and also unemployment insurance benefits. That information can be found at:

<https://www.oregon.gov/employ/Pages/COVID-19.aspx>