



MEMORANDUM

TO: Employer Clients

FROM: MPL Law Firm, LLP

DATE: March 20, 2020

RE: Summary - The Families First Coronavirus Response Act

In order to keep our clients, which employ individuals, updated on the rapidly evolving landscape of employment law changes in response to the COVID-19 pandemic, below is a summary of the Families First Coronavirus Response Act (the “*Act*”). Specifically, this summary outlines how the Act effects paid time off for employees with absences related to COVID-19. The below information is based off information provided by the National Law Review.

The Act

President Trump signed the Act into law late Wednesday night. The law goes into effect April 2, 2020 and will remain in place until December 31, 2020. In short, the Act amends the current Family and Medical Leave Act (the “*FMLA*”) and creates additional paid time off through the Emergency Paid Sick Leave Act (the “*EPSLA*”). Collectively, they, among other things: (1) extend and expand the protections of FMLA job-protected leave for certain childcare COVID-19 related absences, including requiring paid FMLA leave benefits; (2) provide a new paid sick leave entitlement for certain COVID-19 related absences; (3) provide tax credits to help employers defray the costs of paying these benefits; and (4) provide grants to eligible states to further fund their unemployment trust fund accounts. Importantly, the law’s new entitlements only remain in effect through December 31, 2020.

Expansion of FMLA

The Act amends the current FMLA by permitting eligible employees to use FMLA leave related to a public health emergency for child-care related absences. Below are key considerations for employers related to these amendments:

The new law applies to government employers and employers with fewer than 500 employees. Employees working for at least 30 days for a covered employer are eligible immediately to use leave. The Department of Labor has the power to exclude employers with fewer than 50 employees where a hardship exemption applies. The hardship exemption is generally related to an employer’s financial inability to cover the FMLA paid leave. The

Department of Labor is expected to issue guidance as to what does and does not qualify as an exemption.

Eligible employees may take up to twelve (12) weeks of job protected FMLA leave where they are unable to work or telework because of a need for leave to care for a child if their (primary or secondary) school or place of care has been closed, or their child-care provider is unavailable, because of a public health emergency declared with respect to COVID-19. This change also applies to a recommendation to quarantine or where the employee needed to care for a family member recommended to quarantine.

The first 10 days of FMLA leave is unpaid, but employees may elect to substitute accrued vacation, personal leave, or sick leave for the unpaid leave under this section. An employer may not require such substitution. After the 10 days are exhausted, employers must pay the employee not less than two-thirds of the employee's regular rate of pay for each day of FMLA leave taken thereafter, capped at \$200 per day, and capped at \$10,000 in the aggregate. There are separate provisions regarding this paid leave benefit for employees subject to a multi-employer collective bargaining agreement.

The EPSLA

The EPSLA permits employees to use sick leave related to COVID-19, the key components of which are set forth below. Like the FMLA expansion, this applies to government employers and employers with fewer than 500 employees. It may also exclude employers with fewer than 50 employees where a hardship exemption applies. Again, as with the FMLA updates, this is generally related to financial hardships. We are waiting on Department of Labor guidance to clarify the exemption qualifications.

All full-time employees (subject to limited exceptions), regardless of their length of employment, are entitled to take 80 hours paid sick leave immediately. Part-time employees get a pro-rated amount. These new sick leave amounts *are in addition* to, and not in lieu of, any other statutorily provided or employer-provided paid sick leave benefits. Employers additionally must permit employees to use COVID-19 related sick leave before other sick leave.

Paid sick leave under the EPSLA cannot be carried over into the new year, nor are they paid out at termination. Below are the qualifications which permit employees to use this sick leave if they cannot work, or telework:

1. They are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to COVID19 related concerns;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for someone who is subject to a quarantine or isolation order or who has been advised to self-quarantine;
5. The employee is caring for a child if the child's school or place of care is closed or the child-care provider is unavailable because of COVID-19 precautions; or
6. The employee is experiencing any other substantially similar conditions specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor.

If an employee qualifies under the above enumerated conditions, employers are required to pay an employee (i) at his or her regular rate of pay up to a cap of \$511 per day and \$5,110 in the aggregate for sick leave use under reasons (1)-(3) above (employee quarantine or isolation order, self-quarantine recommendation or experiencing symptoms and seeking treatment), and (ii) at 2/3rds his or her regular rate of pay capped at \$200 per day and \$2,000 in the aggregate for sick leave use under reasons (4)-(6) above (caring for others and additional government-specified conditions). Employers must post a notice related to this section in a conspicuous place in the workplace. A model notice will be provided by the Department of Labor by next week.

Tax Credits for Employer's Paid Leave

The Act provides a refundable tax credit equal to 100% percent of qualified paid leave benefits paid by an employer under the new FMLA and EPSLA requirements. The tax credits are subject to certain caps and offset against social security taxes paid by the employer.

Next Steps

Employers should take the following steps.

1. Confirm employee headcount, taking into account part-time employees and any planned layoffs, to determine which provisions of the law would apply.
2. Think about drafting a stand-alone emergency leave policy that outlines these FMLA and sick leave rights, with an eye for ensuring that this policy aligns with the company's leave of absence, sick leave, and PTO policies.
3. Prepare to account for the new paid FMLA and sick leave entitlements from a financial/accounting perspective.
4. Consider potential fluctuations in staffing levels in anticipation of employees taking advantage of these leave entitlements this calendar year.
5. Be mindful of parallel or overlapping leave and PTO requirements under applicable state and local laws.

On the Horizon – Additional Congressional Action – CARES Act

There is a third COVID-19 related bill (CARES Act) which was introduced by Senate Republicans on 3/19. It would cover business interruption loans and further expand tax relief for individuals and businesses. While the details are continuously changing, below are some of the highlights of the bill:

1. Up to \$10,000,000 in loans to cover payroll, health insurance, salaries, mortgage, rent and debt obligations.
2. Potential loan forgiveness for monies used from loans taken to maintain payroll from March 1-June 1, 2020.
3. If you have already taken out an SBA Disaster Assistance loan, you would not be eligible for a business interruption loan and vice versa.

Further consideration of the CARES Act is continuing on Monday 3/23/2020. We will update as we learn more.

While our office will be closed, pursuant to Governor Wolf's shutdown order, our attorneys will remain available via cell phone and email. If you have any questions, please contact your MPL attorney to discuss the above, or other questions about the effect of COVID-19 on your operations. *Email contacts: Andy Miller (amiller@mpl-law.com); James Sanders (jsanders@mpl-law.com); and Christian Miller (cmiller@mpl-law.com).*