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Families First Coronavirus Response Act

On March 18, 2020, President Trump signed into law the “Families First Coronavirus Response Act” (the “Act”), which requires all employers with fewer than 500 employees to provide emergency paid sick leave for employees affected by Covid-19/Coronavirus , and temporarily expands leave under the Family Medical Leave Act (“FMLA”). The Act goes into effect on April 2, 2020, and will remain in effect until December 31, 2020.

This memo is being sent to provide an overview of your obligations under the Act, including certain notice requirements. Please be advised that the Act may be changed by administrative action at anytime. For example, the Act specifically allows the Department of Labor to exempt small businesses if the Act would jeopardize the employer’s ability to continue operating. The Green Law Group LLP will be monitoring any changes in laws and regulations related to the Covid-19/Coronavirus pandemic, and will make every effort to provide updated information as it become available. All information contained herein is for general informational purposes, and is not intended to constitute legal advice. If you have specific questions regarding the contents of this memorandum, please contact The Green Law Group LLP.

I. Emergency Paid Sick

Effective April 2, 2020, if you have 500 or fewer employees, all of your employees (regardless of the length of their tenure with your company) will be eligible for paid sick.

Eligibility: Employees may take paid sick leave if they are unable to work (including telework) because of:

1. The employee is subject to a federal, state, or local quarantine or isolation due to COVID-19;
2. A health care provider advised the employee to self-quarantine due to concerns related to COVID-19 (self-imposed quarantine without medical advice does not qualify under the Act);
3. The employee is experiencing symptoms of COVID-19 *and* seeking a medical diagnosis;
4. The employee is caring for an individual (not limited to family members) who is either subject to a federal, state, or local quarantine or isolation due to COVID-19 or has been advised to self-quarantine due to concerns related to COVID-19;
5. The employee is caring for the employee’s child whose school has been closed or place of care is unavailable due to COVID-19 precautions; or
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor.

Benefit: Full-time employees receive 80 hours of paid sick leave. Part-time employees receive a pro-rata amount based on the number of hours they typically work in a two-week period (e.g. a part-time employee who works an average of 40 hours every two weeks will receive 40 hours of paid sick leave).

For qualifying reasons 1, 2, and 3 (above), eligible employees will receive paid sick leave at their regular rate, except that in no event shall the amount paid exceed \$511 per day and \$5,110 in total.

For qualifying reasons 4, 5, and 6 (above), eligible employees will receive paid sick leave at two-thirds of their regular rate, except that in no event shall the amount paid exceed \$200 per day and \$2,000 total.

Additional Information: Paid sick leave under the Act expires on December 31, 2020. Employers can seek reimbursement for the wages paid to employees under the Act through a refundable tax credit applicable to the employer's portion of Social Security taxes. Employers may not require employees to first use other paid leave provided by the employer before using paid sick leave under the Act, so this leave is in addition to any paid sick leave or PTO currently provided by employers. Employers may not require employees to provide advance notice of the need for leave, but may require employees to follow reasonable notice procedures to continue receiving paid sick time. Employers are prohibited from discriminating or retaliating against an employee for taking paid sick leave or for attempting to assert sick leave rights.

Notice Requirement: Employers must post a notice that advises employees of their rights under the Act. The Secretary of Labor will create a notice by March 25, 2020.

II. Expanded Family Medical Leave

Effective April 2, 2020, if you have 500 or fewer employees, any employee who has worked for you for at least 30 days will be eligible for expanded Family Medical Leave.

Eligibility: Eligible employees (those who have been employed for at least 30 days) may take expanded FMLA leave if he or she is unable to work (including telework) because the employee must care for his or her child who is under 18 years of age and whose school or place of care has closed due to the COVID-19 public health emergency.

Benefit: Eligible employees may take up to 12 weeks of leave. The first 10 days of leave are unpaid, but the employee may elect to use accrued paid sick leave or accrued vacation during this period. After the initial 10-day period, an employee is entitled to receive from the employer two-thirds of his or her normal wages for the number of hours he or she would be regularly scheduled to work, up to a maximum of \$200 per day and \$10,000 in total.

Additional Information: Expanded FMLA leave expires on December 31, 2020. Employers can seek reimbursement for the wages paid to employees under the Act through a refundable tax credit applicable to the employer's portion of Social Security taxes. If the necessity for leave is foreseeable, employers may require employees to

provide advanced notice of leave. Employers are prohibited from discriminating or retaliating against an employee for taking or for attempting to take expanded FMLA leave.

Job Protection: For employers with 25 or more employees, an employee returning from expanded FMLA leave is entitled to reinstatement to the same or an equivalent position. For employers with fewer than 25 employees, an employee returning from expanded FMLA leave is entitled to reinstatement, unless the position no longer exists due to economic conditions or other changes in operating conditions caused by the public health emergency. If the position no longer exists, the employer must make reasonable efforts to restore the employee to an equivalent position, and if those efforts fail, make reasonable efforts for at least a year to contact the employee if an equivalent position becomes available.

We Are Here to Help

If you have any questions or comments regarding this article, or want help with any of the issues mentioned in this article please do not hesitate to contact myself or any of the attorneys listed below with questions related to any of our practice areas, including construction, labor and employment, business formations and tax, insurance coverage disputes, and estate planning.

Please note that this article is only for clients of The Green Law Group and is only intended to provide some general educational information about a rapidly evolving situation. For your particular legal questions, be sure to consult with an attorney.



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