

# LEGAL ALERT

## **Emergency COVID-19 Legislation is Now the Law: Employers Need to Prepare to Provide Paid Sick and FMLA Leave to Eligible Employees**

March 19, 2020

President Trump signed the Emergency Families First Coronavirus Response Act into law late last night. Beginning April 2, 2020, and continuing until December 31, 2020, employers with 500 or fewer qualifying employees will need to offer paid sick and FMLA leave to their employees affected by COVID-19.

### **Emergency Paid Sick Leave Act**

The new law provides two weeks of paid sick leave to all employees, regardless of how long they have been employed. Full-time employees are entitled to 80 hours of paid leave, and part-time employees are entitled to the average number of hours worked in a two-week period. The law also provides a method for calculating the amount of leave for employees with fluctuating work schedules.

Under the new law, sick leave must be paid at an employee's regular rate when the employee:

1. has been ordered to quarantine or isolate by the government;
2. has been advised by a health official to self-quarantine; or
3. the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

The law caps sick leave paid at \$511 per day—up to \$5,110 total for each employee.

In addition to the permitted uses above, an employee may use paid sick leave, with payment at two-thirds of the employee's regular rate of pay, if the employee:

1. is caring for an individual under a quarantine or isolation order or to self-quarantine by a healthcare provider;
2. is caring for a child whose school or childcare has been closed or is unavailable; or
3. is experiencing any other substantially similar condition identified by the Secretary of Health and Human Services.

Under these circumstances, sick leave pay is capped at \$200 per day—up to \$2,000 total for each employee.

Employers cannot require employees to exhaust other forms of paid leave before using this COVID-19-related sick leave. The law also does not allow employers to require employees to use the COVID-19-related sick leave concurrently with any existing paid sick leave already offered by the employer.

The Secretary of Labor has been given the authority to (a) exempt employers with less than 50 employees if the required leave would jeopardize the viability of their business; and (b) exclude certain health care providers and emergency responders from the definition of employees entitled to take this paid sick leave.

### **Emergency Family and Medical Leave Expansion Act**

In addition to providing paid sick leave, the new law extends FMLA protections and grants paid FMLA leave for the first time. If an employee is unable to work or telework because the employee needs to care for a child whose school or daycare has been closed, or whose childcare provider is unavailable due to COVID-19, the employer must provide:

- 10 days of unpaid leave to the employee; and
- up to 10 weeks of paid leave at two-thirds the employee's regular rate of pay.

However, the employer is not required to pay more than \$200 a day—up to \$10,000 total.

During the first ten days of unpaid FMLA leave an employee may elect to use accrued vacation, personal, or other sick leave (including paid time newly available under the Emergency Paid Sick Leave Act). However, the employer cannot require the employee to use any of their accrued paid time off prior to taking this leave.

To qualify for this FMLA paid leave, the employee must have been on the employer's payroll for 30 days (as opposed to the normal FMLA requirement of 12 months).

Again, the Secretary of Labor has been given the authority to exempt businesses with fewer than 50 employees from these requirements and to exclude certain health care providers and emergency responders from the definition of employees entitled to take this paid FMLA leave. Under certain circumstances, employers with fewer than 25 employees are not required to reinstate an employee who uses the Emergency FMLA leave.

### **Tax Credits for Emergency Paid Sick and Family and Medical Leave**

Employers providing paid sick leave or paid family leave under the new law are eligible for tax credits against the employer portion of Social Security taxes. Employers are entitled to a refundable tax credit equal to 100% of the qualified paid sick leave wages paid by the employer each quarter. Likewise, employers are entitled to a refundable tax credit equal to 100% of the qualified FMLA wages paid by the employer each quarter.

### **We Can Help**

This new law goes into effect on April 2, 2020. In the meantime, Congress has indicated that it will be working on another phase of emergency COVID-19 legislation. Mason's Labor & Employment group is here to answer any questions you may have relating to new laws passed to address the COVID-19 pandemic.

To view Maslon's coverage of further legal considerations for COVID-19, go to: **COVID-19 Legal Updates: Critical Business Considerations**.

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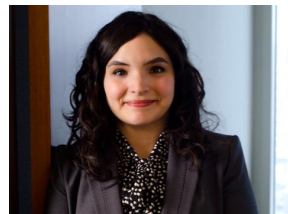
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