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FEDERAL LEGISLATION ON COVID-19: WHAT EMPLOYERS NEED TO KNOW

On Saturday, March 14, 2020, the U.S. House of Representatives passed the “Families First Coronavirus Response Act,” legislation to address the spread and impact of the coronavirus (COVID-19). President Trump supports the bi-partisan legislation and has urged the U.S. Senate to vote in favor of the bill.

The Senate will reconvene on March 16 and is expected to vote on the bill this week. It is unclear whether amendments to the bill will be made and whether the law that is actually implemented will vary from what is provided below.

If ultimately passed, and unless otherwise amended, the Families First Coronavirus Response Act will include the following key measures of direct interest to employers:

1. **Covered Coronavirus Testing at No Cost to Patient:** All group and individual health insurance plans must provide coverage for, without prior authorization or any cost sharing, deductibles, copayments, or coinsurance from the patient: (a) coronavirus testing; and (b) health care provider office visits, urgent care center visits, or emergency room visits that result from such testing. Testing provided by Medicare and Medicaid will likewise be at no cost to the patient, and increased funding for federal Medicaid and testing of the uninsured also will be provided.
2. **Expanded Paid Family and Medical Leave:** The bill amends the Family and Medical Leave Act of 1993 (“FMLA”) to provide that public employees and employees of private employers with less than 500 employees, who have been on the job for at least 30 days, have the following rights:
 - a. **Additional Leave Rights for Coronavirus-Related Reasons:** The right to take up to 12 weeks of job-protected leave under the FMLA to (i) adhere to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus; (ii) care for an at-risk family member who is adhering to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus; or (iii) care for a child of an employee if the child’s school or place of care has been closed, or the child-care provider is unavailable, due to coronavirus.
 - b. **The First 14 Days May Be Unpaid:** The first 14 days for which an employee takes leave for one of the foregoing coronavirus reasons may be unpaid, although the employee may elect to substitute available paid leave. Contrary to other forms of FMLA leave, the employer cannot require the substitution of paid leave.
 - c. **Paid Leave After 14 Days:** After the first 14 days, subsequent coronavirus leave (until the 12 weeks of leave is exhausted) is to be paid at a rate of no less than

two-thirds the employee's regular rate of pay and must be paid for the hours the employee would otherwise be normally scheduled to work. Benefits would continue for the entire leave period.

- d. **Notice:** For coronavirus leave, if the leave is foreseeable, the employee must only provide such notice of leave that is practicable.
- e. **Job Restoration:** Generally, an employee who takes leave under this Act must be restored to their position; however, there are special circumstances for employers with less than 25 employees.

Other forms of leave under the FMLA, not including the leave described above, remain limited to the previous eligibility requirements, and still only apply to employers with at least 50 or more employees. However, unless regulations are issued by the Secretary of Labor that exempt small businesses with less than 50 employees, which the Secretary is authorized to do for cause, the leave requirements under the Act apply to even employers with less than 50 employees.

These requirements would be effective 15 days after enactment of the bill, and would expire on December 31, 2020.

- 3. **Emergency Paid Sick Leave:** Public and private employers with less than 500 employees must provide additional paid sick leave (up to the thresholds set forth below) to employees for any of the following uses:

- a. To self-isolate because the employee is diagnosed with coronavirus;
- b. To obtain a medical diagnosis or care if the employee is experiencing symptoms of coronavirus;
- c. To comply with a recommendation or order by a public official or a health care provider on the basis that the physical presence of the employee on the job would jeopardize the health of others;
- d. To care for or assist a family member of the employee who is self-isolating because he or she has been diagnosed with coronavirus, is experiencing the symptoms of coronavirus, or to comply with a recommendation or order by a public official or a health care provider; or
- e. To care for the employee's child where the child's school or place of care has been closed, or the child care provider is unavailable, due to coronavirus.

The number of hours of paid sick leave to be provided for these purposes is 80 hours for full-time employees, and for part-time employees, the average number of hours the employee works over a two-week period. This paid leave benefit is available for immediate use, regardless of how long the employee has been employed by the employer.

Other important features of this leave include the following:

- **This paid sick leave is in addition to any paid leave already provided by the employer.** Therefore, an employer cannot take the position that their existing paid leave programs satisfy these requirements for additional leave.
- The employer cannot require that other available paid leave be exhausted before this paid sick leave benefit may be used.
- Employers must post the notices of this Act in a conspicuous place, and a model notice will be provided by the Secretary of Labor.
- No employer may retaliate, discharge, or discipline an employee who takes leave under this Act.

These requirements would be effective 15 days after enactment of the bill, and would expire on December 31, 2020.

4. **Practical Application:** When an employee takes leave for one of the coronavirus-related reasons listed above and is employed by an employer with less than 500 employees, the employee will have protections under both the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act. Where that occurs, the first two weeks the employee is out will be covered by the Emergency Paid Sick Leave Act, with the employee receiving their full pay. Thereafter, the employee would be eligible for two-thirds of their pay for another 10 weeks. If the employee has other paid leave benefits available, the employee could elect to utilize those paid leave benefits to make up the difference in pay (*i.e.*, provide for the other one-third of the employee's pay not covered by the Act).
5. **Tax Credits for Paid Sick Leave and Paid Family and Medical Leave:** Under the bill, payroll tax credits are provided to employers for the payment of paid sick leave and paid family and medical leave. The tax credits are allowed against the employer portion of Social Security taxes, with certain caps and limits.
6. **Unemployment Insurance:** Additional funding is provided to states for processing and paying unemployment insurance benefits.
7. **Increased Funding for Food Assistance Programs:** Additional funding is provided for food assistance programs, and the work and work training requirements for SNAP benefits are suspended during the crisis.

We will continue to provide updates on these issues as they evolve. In the meantime, if you have any questions related to the legislation or the impact of COVID-19, please reach out to a member of Cline Williams' Labor and Employment Law Section:



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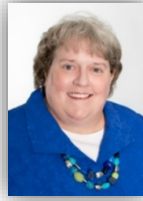
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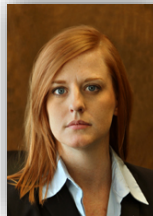
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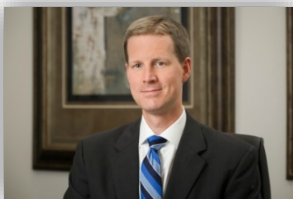
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