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## **New Federal Law Requires Employers with Fewer than 500 Employees To Provide Paid Leave for COVID-19 Related Employee Absences**

On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act (“FFCRA”), which requires private **employers with fewer than 500 employees** and certain government employers of any size to provide paid sick and family care leave to employees who must be absent from work (including tele-work) due to COVID-19 quarantines or illness, to care for family members who are quarantined or whose schools and care facilities are closed. These aspects of the law will be effective on April 1, 2020.

In brief, the law temporarily expands the Family and Medical Leave Act (“FMLA”) to require employers to provide **up to 12 weeks** of mostly paid leave for employees who have worked for the employer for at least thirty days and who must be off work **to care for their children whose schools or care facilities are closed due to the Coronavirus. PLEASE NOTE THAT THIS ASPECT OF THE LAW GOVERNS ALL PRIVATE EMPLOYERS WHO HAVE 500 OR FEWER EMPLOYEES, INCLUDING SMALL EMPLOYERS (WITH FEWER THAN 50 EMPLOYEES) WHO ARE NOT OTHERWISE GOVERNED BY THE FMLA.**

**The first ten days of FFCRA FMLA leave are not paid** or are paid under the employer’s normal paid time off (“PTO”) or sick leave policies. **The remainder of the leave up to a total of 12 weeks is paid at two-thirds of the employee’s normal hourly rate** (up to a maximum of \$200 per day) for the hours the employee would have worked if not on leave.

**Employers must also grant two weeks (up to 80 hours) of paid sick time to employees** who cannot work due to a quarantine order, a self-quarantine advised by a health care provider, an employee’s COVID-19 symptoms and efforts to obtain a diagnosis, the need to care for a family member who is subject to quarantine or self-quarantine advised by a health care provider, the need to care for a child whose school or day care is closed due to COVID-19, and/or due to experiencing a “substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.” **Employees who are on leave due to their own quarantine or COVID-19 symptoms are to be paid at their regular rate of pay up to \$511/day (or minimum wage if it is greater). Employees who are on leave to care for a quarantined family member or for a child whose school or care facility is closed due to Coronavirus or for a “similar condition” are to be paid at two-thirds their rate of pay up to \$200/day.**

**The federal government will reimburse employers for the paid leave benefits they provide** under this law via **refundable tax credits** against

employment taxes that may be submitted quarterly. The tax credits also cover employer health plan expenses allocable to the qualified sick leave required by the FFCRA.

Below, we offer some specifics about how the FFCRA sick and family leaves work and about their limitations:

1. **Health Care Workers:** Employers and regulators may exclude certain health care employees and emergency responders from these leaves.
2. **Potential Regulatory Exemption for Small Businesses:** While FFCRA does not exempt small employers from providing paid leave, it empowers the U.S. Department of Labor (“DOL”) to issue regulations that exempt employers with fewer than 50 employees who cannot comply with the law and maintain the business as a going concern. Watch <https://www.dol.gov/coronavirus> for this information.
3. **Notice and Regulatory Guidance:** The DOL is required to provide guidance to employers regarding complying with their duties to provide FFCRA sick leave and is further required to provide a form notice that employers must post where the employer posts other notices for its employees. Again, watch <https://www.dol.gov/coronavirus> for this information.
4. **Employee Notice:** Employers may require employees to follow reasonable notice protocols regarding their need for leave if employees know leave will be required in advance. With respect to sick leave, after the employee initially takes sick leave, the employer may require reasonable notice regarding the need and timing of continued leave as a condition of providing ongoing paid leave.
5. **FMLA Child Care Leave Job Protection:** As with other FMLA leaves, an employee who takes FFCRA-expanded FMLA leave must be restored to his or her position or an equivalent position at the conclusion of the leave, unless (a) the employer has fewer than 25 employees and (b) the employee’s job no longer exists due to economic conditions caused by COVID-19 and (c) the employer makes reasonable efforts to place the employee into an equivalent position and (d) if the employer cannot immediately place the employee, the employer notifies the employee during the following year if an equivalent position becomes available.
6. **Small Employer Lawsuit Exemption:** An employer that has fewer than 50 employees but is governed by the emergency extension of FMLA under the FFCRA is not subject to a private suit by an employee, but the Department of Labor may still enforce the requirements of the FFCRA.
7. **The FFCRA Paid Leaves Are Temporary:** The FFCRA is emergency legislation specifically aimed at addressing economic impacts of the Coronavirus. It takes effect on April 2, 2020. The paid Coronavirus-related leave requirements expire at the end of 2020.
8. **Sick Leave Scheduling:** Employers cannot require employees to find a replacement to qualify for FFCRA paid sick leave.
9. **FFCRA Sick Leave Priority and Expiration:** FFCRA sick leave is in addition to any other PTO or sick leave employers may offer and is to be taken first. FFCRA sick leave expires when it is no longer needed. It cannot be carried over to other years and the value of unused FFCRA sick leave need not be paid when an employee’s employment ends.
10. **Non-Retaliation:** Employers can’t retaliate against employees for using sick leave or for initiating or participating in an action to enforce the requirements or files a complaint of a violation.
11. **Multi-Employer Bargaining Agreements:** Employers who are parties to multiple employer bargaining agreements may satisfy the requirements of the FFCRA paid leaves by contributing to a plan that is consistent with the bargaining agreement provided that employees get the full benefit of the paid leaves required by the law through the plan.

We are here to help and we welcome your questions.

In addition, we welcome you to join us at the following COVID-19-related webinars that have been planned to assist you with the changing legal landscape resulting from the pandemic.

**Work Safety, Disability Accommodations, and  
Leaves in the COVID-19 Era**

**March 24, 2020 | 2:00-2:30 p.m.**

Click [here](#) for more information, to register, and to submit a question in advance.

**Work-at-Home Risks and Injury Prevention and COVID-19  
Occupational Exposure Discussion with Arthur Chapman Workers'  
Compensation Attorneys**

**March 25, 2020 | 2:00-2:30 p.m.**

Click [here](#) for more information, to register, and to submit a question in advance.

We sign off with our blessings for peace and good health in these extraordinary times.

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