Federal Law
Families First Coronavirus Response Act (HR 6201)

Summary
Plus
Questions and Answers
NEW SICK LEAVE LAW

- Effective April 1, 2020 to December 31, 2020
- Establishes emergency paid leave for companies with fewer than 500 employees
NEW SICK LEAVE LAW CONT’D

• Full time employees will be paid for 80 hours of sick time and part time employees will be paid for the average number of hours they work in a 2-week period

• Employers must provide paid sick time to an employee who is absent for any of the following reasons:
  1. The employees are subject to a federal, state, or local quarantine of isolation order related to COVID-19
  2. The employees have been advised by a health care provider to self-quarantine due to COVID-19-related concerns
  3. The employees are experiencing COVID-19 symptoms and seeking medical diagnosis
  4. The employees are caring for individuals experiencing symptoms of and seeking diagnosis for COVID-19 or are subject to a governmental order or medical recommendations to quarantine or self-isolate
  5. The employees are caring for children whose schools or places of care have been closed or whose care providers are unavailable due to COVID-19
  6. The employees are experiencing any other substantially similar conditions specified by the Secretary of Health and Human Services, except employers of health care providers or emergency responders who can elect to exclude those employees from receiving paid sick leave
NEW SICK LEAVE LAW CONT’D

• **Amount of Payment:**
  – Employers will provide full-time employees with 80 hours of paid time off at their regular rate of pay and eligible part-time employees with paid time off equivalent to the average number of hours they work in a two week period, subject to the following limitations:
    – If leave is taken for reasons 1-3 listed above, the maximum amount of paid leave shall be no more than $511 per day or $5,110 in the aggregate
    – If leave is taken for reasons 4-6, the maximum amount of paid leave shall be no more than $200 per day or $2,000 in the aggregate
  – Employees are not required to first use any other accrued paid time off before taking Emergency Paid Sick Leave
NEW SICK LEAVE LAW CONT’D

• Notice:
  • Paid sick time under this emergency provisions needs to be made available to any employee, regardless of how long they have been employed. Employers cannot require employees to use other sick time or paid time off for Covid-19 related reasons, or before accessing this paid sick leave benefit. A notice of this Act will be made available by the Department of Labor and needs to be posted in the workplace. Notice is here: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

• Tax Credit:
  • Employers will receive a tax credit for qualified paid sick leave up to $511 per day for the employee’s own conditions and $200 per day for an employee caring for another individual. The tax credit is used to offset the employer’s portion of Social Security tax and any excess will be refunded

EXPANDED FMLA

• The Emergency Family Medical Leave Expansion Act requires that employers with fewer than 500 employees provide twelve (12) weeks leave for an employee who is unable to work or telework in order to care for a child whose school or daycare is closed for Covid-19 related reasons.

• This expanded leave is available to any employee who has been employed 30 or more days. The first ten (10) days of this leave may be unpaid, although other employer paid leave time can be used to provide pay for that ten (10) days.

• Any employee returning from FMLA under these emergency measures shall have the same job restoration rights as set forth in in a company’s FMLA policy.
EXPANDED FMLA

- Weeks 1-2 (10 days): Leave is unpaid but employees may use any paid time off they have accrued or to which they are entitled, such as Emergency Paid Sick Leave

- The additional 10 weeks of leave under this Emergency Family Medical Leave Expansion Act is paid as stated as follows:
  - The paid portion of leave is paid at two-thirds of the employee’s regular rate of pay based on the number of hours an employee would otherwise normally be scheduled to work, up to a maximum of $200 per day (and $10,000 in aggregate)
  - This 12 week period does not extend any time under the FMLA act, it simply adds another reason for leave and specifies payment
  - The Labor Department will have the authority to exempt from the paid family leave requirement small businesses with fewer than 50 employees if the requirement to provide leave would jeopardize the viability of the business
  - FMLA has been expanded under the new law. Please consult with your Human Resources Business Partner to discuss how the change effects your business

New DOL Guidance

- https://www.dol.gov/agencies/whd/pandemic
- Fact Sheets on FFCRA Paid Leave Rights and Requirements
- Q&As – FFCRA, COVID-19: FLSA & FMLA
- Poster and FAQs about Notice
Questions

• What is effective date of the FFCRA?
  – April 1, 2020 to December 31, 2020

• Is the FFCRA retroactive?
  – No. If an employer grants paid leave prior to 4/1/20, no tax credit and EE still gets 10 paid days if qualified

• Does the expanded FMLA create a new 12 week entitlement?
  – No. It just creates a 6th reason to take leave
  – If an employee has already used up his/her FMLA entitlement prior to 4/1 (rolling calendar year), then only eligible for 2 weeks of Emergency Paid Sick Leave
Intermittent Paid Leave?

- Can employees take FFCRA family leave on an intermittent basis?
  - Yes. But ONLY with the employer’s consent
  - **Teleworkers** – if part of the time at home is spent caring for kids, then that portion is paid pursuant to the FFCRA (i.e., 2/3 pay up to $200/day)
  - DOL encourages companies to collaborate and agree
  - **Working on site** –
    - Paid sick leave for any reason other than caring for kids out of school/daycare, has to take full 2 weeks to prevent exposure
    - To care for kids – full day increments
Documentation for Paid Sick Leave for Expanded FMLA

• Paid Sick Leave
  – Document employee name, qualifying reason for leave, statement employee is unable to work (including telework and dates of leave
    • Quarantine order or isolation order
    • Name of doctor for advice of self-quarantine
    • Need for tax credit

• Expanded FMLA
  – Notice or proof that school or daycare is closed
  – Same for 1st two weeks of paid sick leave
  – Need for tax credit