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**FAMILIES FIRST CORONAVIRUS RESPONSE ACT:  
What Employers Should Know About Providing  
Extensive Paid Sick Leave and Family and Medical Leave**

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The Families First Coronavirus Response Act (“Coronavirus Response Act”) passed the U.S. Senate on March 18, 2020 and was signed into law by President Trump.

The Coronavirus Response Act contains various provisions including funding for nutrition assistance programs, funding for the Senior Nutrition Program in the Administration for Community Living (ACL), reimbursement for COVID-19 diagnostic testing and services for those without health insurance, funding for COVID-19 diagnostic testing for veterans, health plan testing coverage, additional grants to states for unemployment insurance compensations, tax credits to self-employed individuals to cover losses due to quarantine and isolation, and COVID-19 related paid sick leave and expanded Family Medical Leave Act.

The chief matters of concern for employers are those provisions concerning job-protected COVID-19 related paid sick leave and expanded Family Medical Leave Act, as well as tax credits available to employers. These provisions are effective 15 days from enactment, (i.e. April 1, 2020), and it will expire on December 31, 2020.

With the recent unexpected closures of schools and other early childhood education and care, and the issuance of California statewide ‘State at Home’ order<sup>1</sup> along with similar directives (i.e., “Safer at Home” order in Los Angeles County<sup>2</sup>) in numerous counties in California, many families are left scrambling for childcare. Overall, it is clear that the COVID-19 outbreak has brought a childcare crisis for many families in the United States. While working from home is a possibility for some parents, many jobs cannot be done remotely, and it is difficult to care for a

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<sup>1</sup> On March 19, 2020, Governor Gavin Newsom issued a statewide order instructing all individuals in California to remain in their residence and limit all nonessential movement until further notice. The “Stay at Home” order can be found at <https://covid19.ca.gov/stay-home-except-for-essential-needs/> and more information regarding the exempted 16 critical infrastructure can be found at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>.

<sup>2</sup> The “Safer at Home” order can be found at [http://file.lacounty.gov/SDSInter/lac/1070029\\_COVID-19\\_SaferAtHome\\_HealthOfficerOrder\\_20200319\\_Signed.pdf](http://file.lacounty.gov/SDSInter/lac/1070029_COVID-19_SaferAtHome_HealthOfficerOrder_20200319_Signed.pdf).

child while working at the same time. School and childcare closures have highlighted immediate problems for many of the most vulnerable people in society, and in this case, the great need for parents to have options when schools close and childcare providers are unavailable due to public health emergency. Now that the Coronavirus Response Act has been signed into law in response to some of the social and immediate problems caused by the COVID-19 outbreak, it is important for employers to act swiftly to ensure that employee leaves are administered in accordance with the new law.

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

The Emergency Paid Sick Leave Act requires “covered employers” to provide full-time employees with 10 days (or 80 hours) of paid sick leave when the employee is unable to work or telework due to COVID-19 related events or circumstances. Part-time employees are entitled to the number of hours of paid sick time equivalent of the average number of hours worked over a two-week period.

#### **Covered Employers**

The Emergency Paid Sick Leave Act is applicable to all private employers with fewer than 500 employees. However, the Department of Labor has the authority to issue regulations to exempt small businesses with fewer than 50 employees on the grounds that the imposition of Emergency Paid Sick Leave Act requirements would jeopardize the employer’s ability to continue operating its business.

#### **Eligibility**

Sick time required by the Emergency Paid Sick Leave Act is available to all employees immediately regardless of length of employment.

#### **Uses**

Paid sick time under Emergency Paid Sick Leave Act shall not carry over from one year to the next. The sick leave under this provision is intended for employees to use when they,

- 1) are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2) have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- 3) are experiencing symptoms of COVID-19 and seeking a medical diagnosis;

- 4) are caring for an individual who is subject to a quarantine order or self-quarantine;
- 5) are caring for employee's children if school or place of care are closed, or their childcare provider is unavailable due to public health emergency; or
- 6) are experiencing substantially similar conditions as those specified by the Secretary of Health and Human Services.

### **Rate of Pay**

Covered employers must compensate employees for any paid sick time they take at the higher of (i) the local minimum wage, (ii) the federal minimum wage, or (iii) employee's regular rate of pay.

### **Compensation Cap**

Paid sick leave wages are limited to:

- (i) \$511 per day and \$5,110 in the aggregate per employee for their own use; and
- (ii) \$200 per day and \$2,000 in the aggregate (two-third of the rate employee would otherwise receive) to care for others, including a sick family member or a child unable to attend school.

### **Existing Leave Policies**

The paid sick time under the Emergency Paid Sick Leave Act is in addition to existing paid leave under employer's existing sick leave policies. Employees may use this paid leave before any other paid time off. Employers may not require employees to use other paid leave prior to using the paid sick time under this provision. Further, nothing in the Emergency Paid Sick Leave Act shall in any way diminish the rights or benefits that employees are entitled to under any (a) other Federal, State, or local law; (b) collective bargaining agreement; or (c) existing employer policy. In other words, employers may not change its preexisting policies regarding paid leave as *the employees are entitled to paid sick time under this provision in addition to existing paid leave under employer's existing policy.*

### **Tax Credit**

The Emergency Paid Sick Leave Act also includes terms that provide employers with a refundable tax credit against payroll taxes for each calendar quarter in an amount equal to 100 percent of the qualified sick leave wages that employers pay with respect to that calendar quarter.

### **Other Requirements**

- The Emergency Paid Sick Leave Act specifically prohibits retaliation against any employee who takes leave or files any complaint or proceeding related to the act.
- Employers are required to post notices of the requirements of this provision in conspicuous locations on the employer's premises where notices to employees are customarily posted. A notice of the requirements will be prepared or approved by the Secretary of Labor.

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

The Emergency Family and Medical Leave Expansion Act ("FMLA Expansion Act") expands the traditional Family and Medical Leave Act ("FMLA") and provides 12 weeks of job-protected paid leave for employees who cannot work or telework because they must care for children due to school closures or unavailability of daycare because of a public health emergency.

### **Covered Employers**

Applicable to all private employers with fewer than 500 employees. Unlike the traditional FMLA that covers all employers with 50 or more employees, the FMLA Expansion Act applies to *any* employer with fewer than 500 employees and has no mileage radius requirement.<sup>3</sup> Thus, the FMLA Expansion Act applies to all employers with fewer than 500 employees, including employers with fewer than 50 employees, unless the Department of Labor issues regulations to exempt such employers on the grounds that the imposition of FMLA Expansion Act requirements would jeopardize the employer's ability to continue operating its business.

### **Eligibility**

The leave benefit under the FMLA Expansion Act is available to employees who have been working for at least 30 calendar days before the first day of leave. The FMLA Expansion Act broadens the scope of employees who are eligible for leave and it includes no required number of hours worked.<sup>4</sup>

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<sup>3</sup> The traditional FMLA leave is available only to employees whose employer has at least 50 or more employees within a 75-mile radius of the employee's worksite.

<sup>4</sup> Under the traditional FMLA, employees are not eligible for leave unless they have worked for their employer for at least 12 months and have worked 1,250 or more hours in the 12-month period preceding their leave.

## **Uses**

The leave benefit under the FMLA Expansion Act is intended for employees to use when they are unable to work or telework because they must care for their children due to school closures or unavailability of childcare provider due to a public health emergency. If the employee has FMLA leave available under this provision, Emergency Paid Sick Leave would run concurrently with FMLA leave. However, if the employee does not have any available FMLA leave, then the employee would only be able to take Emergency Paid Sick Leave and the leaves would not run concurrently. As discussed above, please note that Emergency Paid Sick Leave applies to all employees of a “covered employer” immediately and regardless of how long the employees have worked for the employer. Thus, employees become eligible for Emergency Paid Sick Leave before they become eligible for FMLA leave, which requires the employee to have first worked for at least 30 calendar days.

## **Rate of Pay**

For full-time employees:

- The first 10 days of the employee’s leave may consist of unpaid leave, but an employee may choose to substitute any accrued paid leave, including vacation and sick leave, for such unpaid leave.
- After 10 days, employees are paid at two-thirds of their regular rate (for the number of hours the employee normally works per week).

For part-time employees:

- Employees who work part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the 6 months prior to taking leave under FMLA Expansion Act.
- Employees who have worked for less than 6 months prior to leave are entitled to the employee’s reasonable expectation at hiring of the average number of hours the employees would normally be scheduled to work.

## **Compensation Cap**

Payments made to employees is capped at \$200 per day and \$10,000 in the aggregate per employee.

## **Tax Credit**

The FMLA Expansion Act also includes terms that provide employers with a refundable tax credit against payroll taxes for each calendar quarter in an amount equal to 100

percent of the qualified FMLA wages that employers pay with respect to that calendar quarter.

### **Other Requirements**

- **Restoration:** Employer with 25 or more employees have the same obligation as under the traditional FMLA to restore any employee who has taken leave under the FMLA Expansion Act to the same or equivalent position upon his/her return to work. In general, employers with less than 25 employees are excluded from this requirement if such position no longer exists during the employee's leave due to an economic downturn or other circumstances caused by a public health emergency. However, this exclusion does not relieve the employer from making reasonable attempts to restore the employee to an equivalent position. Employers are required to make efforts to restore the employee to work for up to one year following the employee's leave.

The foregoing discussion is just a summary of some of the key provisions of the Coronavirus Response Act that affect California employers. Navigating these new leave requirements, in conjunction with California employers' existing state law paid sick leave obligations, may be novel and complicated. Attorneys at Lee, Hong, Degerman, Kang & Waimey are available to assist with any questions or concerns you may have concerning how this new law affects your business.