

## The Families First Coronavirus Response Act

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On the evening of March 18, 2020, President Donald Trump signed into law The Families First Coronavirus Response Act (the "Act"). The Act is an emergency relief response to the Coronavirus ("COVID-19") pandemic that provides financial support for many affected individuals. The leave provisions provided by the new law will go into effect on April 2nd and remain in effect until December 31, 2020.

While the Act also contains provisions related to free coronavirus testing, bolstering unemployment insurance benefits, and increasing funding for certain nutrition and food assistance programs, this alert will focus on the two provisions of the Act that are intended to augment paid sick, family, and medical leave for employees who miss work because of the COVID-19 pandemic: an emergency expansion of the Family Medical Leave Act ("FMLA") and a new federal paid sick leave law. These are the provisions that potentially will have the most immediate and direct impact on employers. Employers initially bear the cost of providing the leave required by the Act, subject generally to full reimbursement by the federal government through refundable tax credits applied against the employer's portion of Social Security and Medicare quarterly taxes.

**Emergency FMLA.** The Act provides a temporary expansion of the FMLA, first by changing coverage and eligibility. As expanded by the Act, the FMLA covers employers with fewer than 500 employees, and employees may be eligible for leave if they have worked for the employer for at least 30 days prior to the requested leave. Notably, the Act provides two exceptions to coverage: the Secretary of Labor may exclude healthcare providers and emergency responders from the definition of eligible employees, and companies with fewer than 50 employees may be exempt from the Act's provisions if compliance would jeopardize the business' viability.

Under the Act, covered employers must allow eligible employees who are unable to work or telework to take up to 12 weeks of job-protected leave to care for a child younger than 18 years due to closure of school or daycare or due to unavailability of the childcare provider because of a public health emergency. This is the only circumstance under which an employee may seek leave under the Act's expansion of the FMLA, and an employer must restore employees using this leave to their jobs after 12 weeks (although there are some special rules applicable to employers with fewer than 25 employees).

The first ten days of emergency FMLA leave as provided by the Act may be unpaid, but an employee may elect to use accrued vacation or sick leave (or other accrued paid leave) during that 10-day period. After the 10-day period, the Act provides generally that the employer must pay full-time employees at two-thirds of the regular rate of pay for the number of hours the employee normally would be scheduled to work. However, the Act limits the required pay per full-time employee to \$200 per day and \$10,000 in the aggregate. Part-time employees generally are entitled to paid emergency FMLA leave based on the average number of hours worked for the six months prior to taking emergency leave.

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## ANNOUNCEMENTS

**Emergency Paid Sick Leave.** The Act also provides a new federal paid sick leave law covering employers with fewer than 500 employees, and requires employers to provide full-time employees with 80 hours of paid sick leave at the employee's regular rate of pay (with some exceptions). At an employee's request, a covered employer is required to pay a full-time employee the leave mandated by this provision of the Act, instead of providing the initial 10 days of unpaid leave permitted by the emergency FMLA summarized above. Employers who are healthcare providers or emergency responders may elect to be excluded from the federal paid sick leave provisions of the Act. Employers may not require employees to exhaust other forms of leave prior to providing the emergency sick leave mandated by the Act.

The "triggers" allowing an employee to claim emergency paid sick leave under the Act must be related to the coronavirus pandemic and include the following:

- Having been advised by a health care provider to self-quarantine because of COVID-19 concerns;
- Being subject to quarantine or isolation by a federal, state or local government order related to COVID-19;
- Experiencing COVID-19 symptoms and seeking a medical diagnosis;
- Caring for an individual subject to federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns (note that this provision is not limited to caring for family members);
- Caring for the employee's child if the child's school or day care is closed or the child's care provider is unavailable due to the public health emergency; or
- Experiencing any other 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.

Emergency paid sick leave under this provision of the Act is limited to \$511 per day up to \$5,110 total per employee for his/her own use and to \$200 per day up to \$2,000 total to care for others. Moreover, this leave does not carry over to the following year and may be in addition to any paid sick leave currently provided by employers.

Employers must provide employees notice of these new leave provisions. In addition, employers are cautioned not to discourage or prevent eligible employees from seeking leave as provided by the Act, as doing so could be considered discriminatory or an interference with legal rights. An employer who violates the leave provisions of the Act may be subject to penalties as provided under the Fair Labor Standards Act.

As noted initially, provisions of the Act discussed above become effective on April 2nd. Stone Pigman lawyers are available to assist employers navigate and implement the provisions of the Act, as well as to provide other legal advice that your business may need during these times.

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