

## Coronavirus Relief Bill Creates New FMLA And Sick Leave Requirements

As the COVID-19 crisis escalates, the Families First Coronavirus Response Act has been passed to move nationwide relief out quickly to those affected by the public health emergency.

The Act, which will be **effective on April 1, 2020 and sunset on December 31, 2020 for employers with less than 500 employees**, contains two significant provisions for employers to be aware of:

### Emergency Family and Medical Leave Expansion Act

- Employees are eligible for up to 12 weeks of paid emergency family and medical leave under the Act if they are unable to work *or telework* because their child's school or daycare is closed due to a public health emergency.
- The Act amends and expands FMLA on a temporary basis (through December 31, 2020) for employers with fewer than 500 employees, and lowers the eligibility requirement to extend leave for the purpose above to an employee that has worked for an employer for at least 30 days (instead of 12 months under FMLA).
- The first 10 days of emergency family and medical leave are unpaid; however, the employee may use any other available paid leave available, including Washington paid sick leave, PTO, and/or emergency paid sick leave available under this new Act. After 10 days, employers are required to pay employees at least 2/3 of their regular pay during the leave, up to a maximum of \$200 per day and \$10,000 total. Employers may be entitled to a tax credit to offset this expense; *consult with your tax advisor as to the availability of tax credits.*
- The Act includes language that may allow the Secretary of Labor to exclude health care providers, emergency responders, and employers with fewer than 50 employees, "when the imposition of such requirements would jeopardize the viability of the business as a going concern." *Details on this provision will be determined through administrative rulemaking.*
- Employers will generally have the same obligation as under the existing FMLA to return any employee who has taken Emergency FMLA to the same or equivalent position upon returning to work. However, an employer with fewer than 25 employees may not be required to reinstate employees when the job no longer exists due to economic or operating conditions caused by the public health emergency. Employers do have an obligation to make reasonable efforts to restore an employee to an equivalent position or notify them when one becomes available.

### Emergency Paid Sick Leave Act

- Emergency paid sick leave will be available for employees regardless of tenure, in addition to any other paid leave to which an employee is already entitled (such as paid sick leave). Employers cannot require employees to use other employer-provided paid leave before taking emergency paid sick leave.
- Full time employees will be eligible for up to 80 hours of paid sick leave, and part-time employees are eligible for a prorated amount based on their average hours worked over a two-week period.
- Employees are eligible for emergency paid sick leave paid at their regular rate of pay, up to \$511 per day and \$5,110 total, if they:
  1. Are subject to a federal, state, or local quarantine order related to COVID-19;
  2. Have been advised by a medical provider to self-quarantine due to COVID-19 concerns;
  3. Are experiencing symptoms of and are seeking medical care for symptoms of COVID-19;

- Employees are eligible for emergency paid sick leave at 2/3 of their regular rate of pay, up to \$200 per day and \$2,000 total, if they:
  1. Are caring for an individual subject to quarantine order or advised to self-quarantine due to COVID-19;
  2. Are caring for a child whose school has been closed, or whose child care provider is unavailable due to COVID-19 precautions; or
  3. Are 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. *Details will be determined through administrative rulemaking.*
- As with the Emergency FMLA, the Act includes language that may allow the Secretary of Labor to exclude health care providers, emergency responders, and employers with fewer than 50 employees, “when the imposition of such requirements would jeopardize the viability of the business as a going concern.” *Details on this provision will be determined through administrative rulemaking.*

Archbright will continue to monitor these new laws and will update members as more information is provided.

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