

## Legal Update for Employers Concerning New Federal COVID-19 Laws

Last week, in response to the COVID-19 pandemic's impact on the United States, Congress passed several new laws that apply to many employers. These laws include first-of-its-kind mandatory federal paid sick leave for employees impacted by COVID-19 and those serving as caregivers for individuals with COVID-19. President Trump signed the bills on Wednesday, March 18, 2020. We have received a number of questions from our clients regarding these issues. This legal update summarizes the key employee benefit provisions of the new laws that directly affect employers.

There are two provisions providing paid leave to employees who miss work because of the COVID-19 outbreak: (1) an emergency expansion of the federal Family Medical Leave Act ("FMLA") to require special paid leave, and (2) a new federal paid sick leave law. Employers that provide required paid leave under these new provisions will be eligible for refundable tax credits. These expansions of federal law are in addition to expansions and interpretations of

state and local laws. On the following pages, you will find executive summaries of the new federal provisions.

We know that many of our clients are considering layoffs, salary reductions, and/or furloughs in the face of the economic impact of the Covid-19 pandemic and/or the recent drop in oil prices. It is unclear how furloughed employees must be handled under these new laws, and employers should proceed with caution before conducting layoffs, furloughs, or salary reductions, as such actions may be subject to the federal WARN statute, state min-WARN statutes, and/or local regulatory restrictions that could impact the timing and cost of corporate restructuring or cost remediation efforts.

If you have legal questions concerning these new laws, state-specific issues, or any other employment-related matters, please do not hesitate to contact any of our lawyers.

<b>EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT</b>	
<b>Effective dates</b>	<ul style="list-style-type: none"> <li>• Effective April 2, 2020</li> <li>• Ends December 31, 2020</li> </ul>
<b>Employer Coverage</b>	<ul style="list-style-type: none"> <li>• Applies to employers with fewer than 500 employees, including employers with less than 50 total employees</li> <li>• The Secretary of Labor may issue regulations excluding businesses with fewer than 50 employees if the required leave would jeopardize the viability of the business. Regulations are to be issued by April 2, 2020.</li> </ul>
<b>Employee Eligibility</b>	<ul style="list-style-type: none"> <li>• Individuals who have worked for the employer for 30 days prior to the designated leave are eligible.</li> <li>• The Secretary of Labor may issue regulations excluding healthcare workers and emergency responders from the definition of "employee" for emergency leave. Regulations are to be issued by April 2, 2020.</li> </ul>
<b>Covered Reasons for Emergency Leave</b>	<ul style="list-style-type: none"> <li>• Applies to an eligible employee of a covered employer who is unable to work or telework because the employee must care for a child (under 18 years of age) if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency such as COVID-19</li> </ul>
<b>Paid Leave</b>	<ul style="list-style-type: none"> <li>• The first 10 days of leave may be unpaid.</li> <li>• During the initial 10-day period, an employee may elect to substitute any accrued paid leave (vacation, sick leave, floating holidays, etc.) to cover some or all of the 10-day unpaid period.</li> <li>• After the initial 10-day period, the employer generally must pay full-time employees at two-thirds the employee's regular rate for the number of hours the employee regularly works.</li> <li>• The required pay is limited to (capped at) \$200 per day and \$10,000 in the aggregate per employee.</li> </ul>
<b>Calculating Regular Rate of Pay</b>	<ul style="list-style-type: none"> <li>• For full-time employees, the regular rate of pay is the amount of total compensation in a regular workweek divided by the number of hours typically worked.</li> <li>• For part-time employees and employees who work irregular schedules, employers should average the number of hours the employee worked for the six months prior to taking leave. Employees who have worked for less than six months prior to leave are entitled to the employee's reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work in a workweek.</li> </ul>
<b>Job Restoration</b>	<ul style="list-style-type: none"> <li>• Employers with 25 or more employees must return any employee who has taken emergency leave to the same or equivalent position upon the return to work</li> <li>• Employers with fewer than 25 employees are generally excluded from this requirement if the employee's position no longer exists following the emergency leave due to an economic downturn or other circumstances caused by a public health emergency during the leave period. But the employer must make reasonable attempts for up to a year following the employee's leave to return the employee to an equivalent position.</li> </ul>
<b>Enforcement</b>	<ul style="list-style-type: none"> <li>• This new law appears to prevent employees from bringing a private civil cause of action against employers who do not comply – complaints will be handled by the DOL.</li> </ul>

<b>EMERGENCY PAID SICK LEAVE ACT</b>	
<b>Effective dates</b>	<ul style="list-style-type: none"> <li>• Effective April 2, 2020</li> <li>• Ends December 31, 2020</li> </ul>
<b>Employer Coverage</b>	<ul style="list-style-type: none"> <li>• Applies to employers with fewer than 500 employees</li> <li>• The Secretary of Labor may issue regulations excluding businesses with fewer than 50 employees if the required leave would jeopardize the viability of the business. Regulations are to be issued by April 2, 2020.</li> </ul>
<b>Employee Eligibility</b>	<ul style="list-style-type: none"> <li>• All employees are eligible, without any length of service requirement</li> <li>• The Secretary of Labor may issue regulations excluding healthcare workers and emergency responders from the definition of “employee” for emergency leave. Regulations are to be issued by April 2, 2020.</li> </ul>
<b>Covered Reasons for Emergency Leave</b>	<p>This Act allows an eligible employee to take paid sick leave because the employee is:</p> <ol style="list-style-type: none"> <li>1. subject to a federal, state or local quarantine or isolation order related to COVID-19;</li> <li>2. advised by a health care provider to self-quarantine due to COVID-19 concerns;</li> <li>3. experiencing COVID-19 symptoms and seeking medical diagnosis;</li> <li>4. caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;</li> <li>5. caring for the employee’s child, if the child’s school or place of care is closed or the child’s care provider is unavailable due to a public health emergency; or</li> <li>6. 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.</li> </ol>
<b>Paid Leave</b>	<ul style="list-style-type: none"> <li>• Employers must provide qualifying full-time employees with 80 hours of paid sick leave, and qualifying part-time employees with a number of hours of paid sick leave equivalent to their average two-week schedule</li> <li>• For <b>qualifying reasons 1, 2, or 3</b> listed above, sick leave is paid <b>at the employee’s regular rate</b>, capped at \$511 per day and \$5,110 in the aggregate per employee.</li> <li>• For <b>qualifying reasons 4, 5, or 6</b> listed above, sick leave is paid <b>at the employee’s regular rate</b>, capped at \$200 per day and \$2,000 in the aggregate per employee.</li> </ul>
<b>Calculating Regular Rate of Pay</b>	<ul style="list-style-type: none"> <li>• For full-time employees, the regular rate of pay is calculated per the Fair Labor Standards Act (“FLSA”).</li> <li>• For part-time employees and employees who work irregular schedules, employers should average the number of hours the employee worked each work day for the six months prior to taking leave. Employees who have worked for less than six months prior to leave are entitled to their reasonable expectation at time of hiring of the average number of hours per day they would normally be scheduled to work.</li> </ul>
<b>Enforcement</b>	<ul style="list-style-type: none"> <li>• Failure to pay employees sick leave will be enforced as unpaid wages under the FLSA.</li> </ul>

This article is a summary of recent legal developments and is provided for informational and educational purposes only. It is not intended as legal advice or to create an attorney-client relationship. For more information or assistance contact:

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