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FINDING SOLUTIONS . . . ONE CLIENT AT A TIME

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Families First Coronavirus Response Act

On March 18, 2020, the President signed the Families First Coronavirus Response Act (the Act). Part of the Act provides for Emergency Paid Sick Leave. The pertinent parts of this mandated leave provides:

1. Employers (1-500 employees) must provide full time employees with 80 hours paid sick-time and part-time employees paid leave based on the average number of hours that the employee works in a 2-week period.
2. The Act takes effect 15 days after the date of enactment, which was signed on March 18, 2020.
3. The Department of Labor will be creating a notice and employer guidelines within 15 days of the enactment (by March 25, 2020) to assist employers. The notice is to be posted at places of employment.
4. The paid sick leave must be provided if leave is needed because:
 - a. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
 - b. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - c. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - d. The employee is caring for an individual who is subject to an order as described in subparagraph (a) above) or has been advised as described in paragraph (b) above);
 - e. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or
 - f. The employee is 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.

5. Note the paid sick leave excludes healthcare providers and emergency responders.
6. Paid sick leave is based on the employee's required compensation and the number of hours the employee would otherwise be normally scheduled to work. Required compensation may not be less than the greater of employee's regular rate of pay (as determined under the Fair Labor Standards Act), state minimum wage, or federal minimum wage. In no event shall paid sick time exceed: \$511 per day and \$5,110 in the aggregate for a use described in paragraph 2 (a-c) above and \$200 per day and \$2,000 in the aggregate for a use described in paragraph 2(d-f) above. Subject to the prior notes, the sick leave pay for care of a family member shall be 2/3 of employee's regular rate of pay.
7. For part-time employees whose schedules vary from week to week, to the extent that an employer is unable to determine with certainty the number of hours an employee would have worked if such employee had not taken paid sick time, the employer shall use a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes the paid sick time, including hours for which the employee took leave of any type. If the employee has not worked over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work should be used.
8. An employer may not require the employee to search for or find a replacement employee to cover the hours during which the employee is using paid sick time.
9. The paid sick time shall be available for immediate use by the employee regardless of how long the employee has been employed by an employer.
10. An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the Families First Coronavirus Response paid sick time.
11. After the first workday (or portion thereof) an employee receives paid sick time under this Act, an employer may require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.
12. An employer may not discharge, discipline, or in any other manner discriminate against any employee who takes leave in accordance with the Act, has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act (including a proceeding that seeks enforcement of this Act), or has testified or is about to testify in any such proceeding.
13. Failure to comply with the Act will be considered a failure to pay minimum wages in violation of the Fair Labor Standards Act and be subject to penalties
14. The Act and the requirements under this Act expire on December 31, 2020.

15. The Secretary of Labor has authority to issue regulations for good cause to exempt small businesses with fewer than 50 employees from the requirements of coverage for an employee who is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions section, when the imposition of such requirements would jeopardize the viability of the business as a going concern.

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Current as of writing 3/20/20

This document should not be construed as legal advice. Please seek legal counsel with specific questions.