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IMPORTANT CLIENT UPDATE

Families First Coronavirus Response Act

The Families First Coronavirus Response Act (the “Act”) was signed into law on March 18, 2020. The purpose of the Act is to provide health and economic support to individuals impacted by COVID-19. The following is a summary of key provisions most relevant to employers and employees.

Emergency Family and Medical Leave Expansion Act

The Emergency Family and Medical Leave Expansion Act (“EFMLA”) amends the Family Medical Leave Act of 1993 to address qualifying needs related to the public health emergency created by COVID-19. Under the EFMLA, eligible employees will now be able to take up to 12 weeks of partially paid leave if they are unable to work or telework because they must care for their child(ren) under the age of 18. This applies if: 1) the employee’s child’s school or childcare facility is closed, or 2) the child’s care provider is unavailable due to COVID-19.

Unlike the FMLA, to be eligible for EFMLA, an employee needs only to have been employed for “at least thirty calendar days by the employer with respect to whom leave is requested.” The EFMLA applies to all public sector employers regardless of size of workforce unlike the FMLA. The Department of Labor has authority to issue regulations exempting all healthcare providers and emergency responders from the law. Moreover, public and private employers have the authority to elect to exclude healthcare providers and emergency responders from this mandate.

Although the first 10 days of EFMLA leave are unpaid, for most public employees pay will be mandated by the requirements of the Emergency Paid Sick Leave Act or employees may be eligible to use employer paid accrued leave to cover this 10 day period. Beginning on the 11th day, employers are responsible for providing paid leave at two-thirds of the employee’s regular rate of pay for the balance of the employee’s 12-week leave. Employers are not required to pay more than \$200.00 per day in wages or to exceed \$10,000.00 total to each employee. Like FMLA, employers must restore an employee’s employment to the same or equivalent position upon their return to work.

We are awaiting further guidance from the Department of Labor regarding two issues of particular importance to public bodies. First, it is unclear how narrowly or broadly the Department of Labor will define “emergency responders” who may be excluded. Specifically, we do not know if it is the intent of the Act to include police, fire and ambulance workers, or other positions critical to the provision of essential services such as 9-1-1 dispatch or corrections employees. Given the circumstances, public employers would be prudent to weigh excluding such employees from the EFMLA leave provisions. Second, the Act does not specify whether the 12 weeks under the EFMLA count against an employee’s statutory 12-week FMLA entitlement, or if it is an additional period. We will update you of any regulatory developments in these areas.

The EFMLA goes into effect April 2, 2020 and will remain in effect until December 31, 2020.

Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act (“EPSLA”) applies to all public employers. Employees are eligible for the benefits regardless of their length of employment. Full-time employees are eligible for up to 80 hours of paid emergency sick leave; and, for part-time employees, the paid emergency sick leave hours are the number of hours the employee works, on average, over a 2-week period. Under EPSLA, employees are entitled to receive paid sick leave if the employee is unable to work or telework due to any of the following reasons:

1. The employee is subject to a Federal, State, or local quarantine or isolation order.
 2. The employee has been advised by their healthcare provider to self-quarantine due to concerns related to COVID-19.
 3. The employee is experiencing symptoms of COVID-19 and is actively seeking a medical diagnosis.
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4. The employee is caring for an individual who (a) is subject to a Federal, State, or local quarantine or isolation order, or (b) has been advised by their healthcare provider to self-quarantine.
 5. The employee is caring for their child (a) whose school or place of care has been closed, or (b) whose care provider is unavailable due to COVID-19.
 6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health & Human Services in consultation with the Secretary of the Treasurer and the Secretary of Labor.

Employees taking leave for reasons 1 through 3, above, are entitled to paid leave at the lesser of their regular rate of pay or \$511.00 per day, not to exceed \$5,110.00 per employee. Employees taking leave for reasons 4 through 6, above, are only entitled to the lesser of two-thirds of their normal rate of pay or \$200.00 per day, not to exceed \$2,000.00 per employee. Employers may pay benefits in excess of the limits, but any paid leave provided by an employer before the Act is effective (April 2, 2020) cannot be credited against the employee's paid leave entitlement under this Act. Employees have the right to choose to use paid emergency sick leave before using other employer paid time off benefits, including, but not limited to, PTO, vacation, sick days, and compensatory time. Additionally, an employer may not require any employee to use banked paid time prior to the use of Paid Sick Leave Act leave. There is no carryover of unused EPSLA hours into subsequent years or payout upon termination of employment.

Like the EFMLA, employers may exempt healthcare providers or emergency responders.

The EPSLA goes into effect April 2, 2020 and will remain in effect until December 31, 2020.

Employers will be required to post a notice regarding employee rights under these laws. A model notice will be made available by the Federal Government to employers for this purpose.

Should you have questions concerning this new option, please do not hesitate to contact our Office.

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