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COVID-19 RESPONSE

CARES Act: Labor Provisions

The Act confirms and clarifies the benefits available to employees under the Families First Coronavirus Response Act and Emergency Family and Medical Leave Expansion Act and the advanced tax credits employers can take in providing these benefits.

Benefits Available to Employees

All employees are eligible for the paid sick leave. For the expanded FMLA benefit, in addition to employees who have been employed by their current employer for at least 30 days, expanded family and medical leave is now available to employees who (1) were laid off by that employer not earlier than March 1, 2020, (2) had worked for the employer for at least 30 of the last 60 calendar days prior to the layoff, and (3) were rehired by the employer.

Employees may receive paid sick days for the following reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
5. The employee is caring for their son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of the son or daughter is unavailable, due to COVID-19 precautions.
6. 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.

Eligible employees can receive the expanded FMLA leave if they are unable to work (including unable to work remotely) because they need to care for a son or daughter because the child's school or place of care has been closed. The child must be under 18 years of age. This also applies if the childcare provider—presumably a nanny or other caretaker compensated for such services—is unavailable due to COVID-19.

For the ten-day sick pay, full-time employees receive up to 80 hours of paid sick leave. Part-time employees receive the average number of hours worked over a two-week period.

If the employee uses the leave of absence for items 1,2, and 3 in the above list, the paid sick leave act caps the benefit at \$511 per day, or \$5,110 if ten days are used. If the employee uses the leave of absence for items 4,5, or 6 in the above list, the benefit is capped at \$200 per day (\$2,000 in the aggregate).

The FMLA Expansion Act has higher limits. If the employee is unable to work or needs to work remotely because they need to care for a son or daughter because the child's school or place of care has been closed, the first 10 days of leave are unpaid. But, the rest of the days taken (up to 50, for 12-weeks total) must be paid at two-thirds the employee's regular rate of pay, up to \$200 per day and \$10,000 in the aggregate. The employee can elect to use any available, accrued vacation, sick leave, or other PTO during the first 10 days of unpaid leave.

Tax Credits Available to Employers

The Act amends the FFCRA to allow an employer to request a cash advance from the IRS of payroll tax credits allowed for required sick leave and expanded paid family leave and/or have refundable credits calculated through the end of the most recent payroll period in the quarter. The United States Treasury will provide application forms and instructions on how to claim the credit. Finally, the United States Treasury will waive any penalties for failure to make a payroll tax deposit if such failure was due to the anticipation of the credits.

The Act also gives the United States Department of Labor the authority to postpone certain deadlines in the event of a public health emergency declared by the Secretary of Health and Human Services.

Finally, the Act delays the deadline to make required annual or quarterly funding contributions to single employer defined benefit pension plans through January 1, 2021. The amount of each minimum required contribution shall be increased by interest accruing for the period between the original due date for the contribution and the payment date at the effective rate of interest for the plan for the plan year.