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**Employment Update: Families First Coronavirus Response Act Summary\***  
*Posted March 19, 2020*

The Families First Coronavirus Response Act (“FFCRA” or “Act”) was signed into law by the President on Wednesday. Prior to the Senate’s vote to pass the law, the House made additional changes to the bill limiting some of the provisions related to paid leave that were required in the original version of the bill. The expanded FMLA provisions are notably less than originally expected. The Act will officially go into effect within 15 days and will remain in place until December 31, 2020. The following is a summary of the key portions of the Act that are relevant for employers. If you have more specific questions please feel free to reach out to us.

- **Expansion of FMLA leave (“Emergency Family and Medical Leave Expansion Act” or “EFMLA”):**
  - **Qualifying Reason:** The EFMLA provides up to 12-weeks of protected leave for employees who are unable to work entirely (including working remotely) due to the need to care for the employee’s son or daughter (under 18) because their son or daughter’s school or child care service is closed due to coronavirus. (FFCRA appears to have been amended so that this is the only qualifying reason under this new provision – regular FMLA protections would likely protect employee sickness or caring for sick family member, but it would only apply to employers with 50 or more employees and if the employee had worked for the employer for 12 months or more)
  - **Employers:** The EFMLA applies to all employers with less than 500 employees. The Secretary of Labor has the authority to provide an exemption for employers with less than 50 employees when the imposition of such requirements would jeopardize the viability of the business. (It is unclear if this will be considered an automatic exemption. If you fall into this category we can discuss)
  - **Employee Eligibility:** Workers who have been on payroll for at least 30 calendar days are eligible for EFMLA benefits.
  - **Paid/Unpaid:** The first 10 days of leave are unpaid, but employees may elect to use accrued sick or vacation time to cover these days (employers cannot require them to use accrued vacation or sick leave). After the first 10 days, the remaining leave must be paid by the employer in an amount not less than 2/3rds of the employee’s regular rate of pay. However, the amount of paid leave is capped at \$200 per day per employee or \$10,000 total per employee.
  - **Reinstatement:** Just as with any other FMLA leave, an employee who uses this EFMLA leave is entitled to reinstatement to the same or equivalent position.
    - For employers with less than 25 employees, reinstatement is not required if the following conditions are met: the position held by the employee at the time the leave started no longer exists due to economic conditions or other operating conditions caused by coronavirus; the employer has tried to restore the employee to an equivalent position but no position is available; and the employer makes a reasonable effort to contact the employee if an equivalent position becomes available within a year.

- **Emergency Paid Sick (“EPS”) Leave Act:**
  - **For COVID Purposes Only:** The EPS Leave Act provides additional paid sick leave for all employees for various coronavirus related issues listed below.
  - **Available Immediately:** The EPS leave is granted (not accrued) so it is available for immediate use by all employees.
  - **New and Separate Entitlement:** The EPS leave is provided *in addition to* any sick leave or PTO already provided by the employer. Thus, the EPS leave under the Act should be tracked separately and employers cannot require employees to use up other accrued paid sick leave or PTO prior to using the emergency sick leave.
  - **Employers:** The EPS Leave Act applies to all employers with less than 500 employees. The Secretary of Labor has the authority to provide an exemption for employers with less than 50 employees when the imposition of such requirements would jeopardize the viability of the business. (Again, it is unclear how the exemption will be obtained)
  - **Amount of Paid Sick Leave:** The EPS Leave Act provides 80 hours of EPS leave for full-time employees and part-time employees are eligible for EPS leave equivalent to the average number of hours they work over a two-week period.
  - **Reasons for EPS Leave and Caps on Amount Paid:** EPS leave must be provided to all employees who are unable to work entirely (including working remotely) due to any of the reasons listed below. The amount of paid leave is capped at certain amounts depending on the reason for the leave.
    - EPS leave related to the employee’s own health – Paid at the employee’s regular rate of pay (or the applicable minimum wage rate, whichever is greater) capped at \$511 per day or \$5,110 total.
      - The employee is subject to a federal, state, or local quarantine or isolation order for COVID-19;
      - The employee is advised by a health care provider to self-quarantine due to COVID-19 concerns; or
      - The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
    - EPS Leave related to the employee’s need to care for others – Paid at 2/3rds of the employee’s regular rate of pay (or the applicable minimum wage rate, whichever is greater) and capped at \$200 per day or \$2,000 total.
      - The employee is caring for an individual who is under a quarantine or isolation order or has been advised to self-quarantine;
      - The employee is caring for their son or daughter whose school or child care has been closed due to COVID-19; or
      - The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.
  - The sick leave under the Act does not carry over to the next year and is not payable upon termination.
  - Employers may not require an employee to search for or find a replacement employee to cover the hours during which the employee is using paid sick time as a condition of using sick time provided under the Act.
  - Employers may require employees on sick leave to follow reasonable notice procedures in order to continue receiving such paid sick time.
  - Employers are required to post a notice informing employees of their expanded sick leave rights. A model notice is to be provided by the Secretary of Labor within 7 days.

- **Other Provisions:**

- Payroll Tax Credits are available to employers that provide either the EPS leave or paid FMLA to employees for the specific Coronavirus-related purposes defined by the Act. Employers will be entitled to a payroll tax credit for each calendar quarter equal to 100% of the qualified EPS leave wages or FMLA paid by the employer in the quarter, however, it is capped at the same limits as the wages above (i.e. \$511 per day for EPS leave related to the employee's health or \$200 per day for leave related to the care of an individual or child; or \$200 per day or \$10,000 total for paid family leave).
- The Act also provides for \$1 billion in 2020 for emergency grants to states for activities related to unemployment insurance benefits. There are no direct federal unemployment benefits provided to employees.

*\*Edited from the original to correct name of FFCRA.*