

NEW LAW RELATED TO COVID-19 ON PAID SICK LEAVE AND FAMILY EMERGENCY CARE LEAVE EFFECTIVE APRIL 1, 2020

The Families First Coronavirus Response Act ("FFCRA") was signed into law March 19, 2020. In the SF Bay Area where all schools have closed and all counties have issued a shelter in place order, most employees will qualify for new coronavirus related benefits under FFCRA's Emergency Paid Sick Leave Act and Emergency Family and Medical Care Expansion Act.

Both Acts cover employers with 1 to 500 employees, are effective 4/1, and sunset at the end of the year. Impacted employers have 15 days to understand their new obligations and prepare.

Emergency Paid Sick Leave Act

- Mandates an additional 80 hours of paid sick leave for full time employees (or 2 times the average weekly hours for a part-time employee) if an employee is unable to work or telework, due to reasons below:
 1. Employee is quarantined by governmental order;
 2. Employee is quarantined by doctor's order;
 3. Employee is experiencing Coronavirus symptoms;
 4. To provide care for a person who is quarantined;
 5. To provide care for a child due to closure of schools/daycare;
 6. Employee is experiencing any substantially similar condition that may be specified by the Secretaries of Health, Treasury and Labor.

- Sick leave is paid at the employee's regular daily rate, up to a maximum of \$511 per day, \$5,110 in the aggregate if leave is taken for reasons 1-3 above (leave related to the employee's needs) and at 2/3 the employee's daily rate, up to a maximum of \$200/day or \$2,000 aggregate for leave taken for reasons 4-6.
- Again, this emergency sick leave is on top of what a company already provides, and may be used by the employee before other sick leave benefits. Use of this paid sick leave is protected.

**Employers are required to give notice of these rights by posting a notice in a conspicuous place on the employer's premises. However, since most employees are working remotely, it is advisable for an employer to post the notice on any company intranet, and mail and/or email this notice to all workers. [Here](#) is a link to the US Department of Labor's model poster.

Emergency Family and Medical Leave Expansion Act ("EFMLEA")

The EFMLEA provides 12 weeks of leave to an employee who has worked for at least 30 days for the employer, and who is unable to work or telework due to the need to care for a child resulting from school/daycare closure.

The first 10 days are unpaid, but an employee may utilize any available paid sick, medical or vacation benefits.

The remainder of the 12-week period shall be paid by the employer at a rate of 2/3 the employee's regular rate of pay, but no more than \$200 per day and \$10,000 in the aggregate.

Leave under this Act is protected, but an employer with fewer than 25 employees does not have to return the worker back to the same or comparable provision if the position is no longer available due to economic conditions of employer. But in such case, the employer must make reasonable effort to restore the worker to an equivalent position, for a period of one year. In other words, if an employee on EFMLEA leave is laid off, that employee should be offered the next opening for a similar position.

The Secretary of Labor can issue regulations to exempt businesses with fewer than 50 employees if compliance with the EFMLEA would jeopardize the viability of the business as a going concern. The Secretary could also exclude medical providers and first responders as eligible employees. (No word yet on these regulations.)

Tax Credit and Other Information

Employers who provide the emergency benefits above may apply for tax and payroll credits, but in the meantime, would be expected to front the cost of these benefits.

For employers in need of immediate assistance, the SBA has implemented emergency relief programs.

<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>

For employers who anticipate layoffs of 50 or more employees, by Executive Order N-31-20 from Governor Gavin Newsom, CAL WARN's 60-day notice requirement will be relaxed. Notice should still be given as soon as possible, but the 60-day notice period

and associated penalties are suspended.

If you need help preparing for the new leaves, have questions or need any other assistance, please do not hesitate to reach out to us. Donahue Fitzgerald's employment attorneys are committed to providing your business with our best guidance and advice during these changing times. We will provide updates as more information becomes available.

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