The Families First Coronavirus Response Act (FFCRA) – What Employers Need To Know
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FFCRA Basics

• Signed into law on Wednesday, March 18, 2020.
• Effective April 1, 2020.
• Two key issues for employers:
  – Emergency Paid Sick Leave Act providing 2 weeks paid sick leave.
  – Emergency Family and Medical Leave Expansion Act providing 12 weeks family leave (10 weeks paid).
• Expires on December 31, 2020.
Emergency Paid Sick Leave Act

- Covers all private employers with 500 or fewer employees, and all public employers.
- No minimum period of employment is required.
- Provides 2 weeks leave
  - 80 hours for full time employees;
  - Typical number of hours over 2 weeks for part time employees.
- These sick leave benefits are in addition to any sick, vacation, PTO benefits already offered by the employer.
- Sick leave has to be permitted first and cannot be combined with other leave benefits.
Emergency Paid Sick Leave Act

• Leave allows an employee to be absent for:
  – Subject to a Federal, State or local quarantine or isolation order related to COVID-19;
  – Advised by a health care provider to self-quarantine related to COVID-19;
  – Experiencing COVID-19 symptoms and is seeking a medical diagnosis;
  – Caring for an individual with items 1 or 2 above;
  – Caring for children if schools are closed or caregiver is unavailable because of ongoing public health emergency;
  – To address any other “substantially similar condition” identified by HHS in consultation with Treasury and Dept. of Labor.
Emergency Paid Sick Leave Act

• Payment rate for reasons 1-3.
  – Greater of federal minimum wage, state minimum wage, or regular rate.
  – Capped at $511 per day ($5,110 for the entire 10 days)

• Payment rate for reasons 4-6.
  – Greater of federal minimum wage, state minimum wage, or regular rate.
  – Capped at $200 per day ($2,000 for the entire 10 days).
Emergency Paid Sick Leave Act

• Exceptions to Required Paid Sick Leave:
  – Secretary of Labor may issue regulations to exempt “health care providers” and “emergency responders” from the definition of employer.
  – Secretary of Labor may issue regulations exempting small businesses (less than 50 employees) from requirement to offer leave for a child when school is closed if that paid sick time would jeopardize the viability of the business as an ongoing concern.

• Poster will be issued by Department of Labor in advance of effective date (supposed to be today!)
• Regulations supposed to be issued ASAP to provide guidance regarding open questions.
Emergency Family and Medical Leave Expansion Act

• Covers all private employers with 500 or fewer employees, and all public employers.
• 30 days minimum period of employment is required.
• Provides 12 weeks leave
  – First 2 weeks leave is unpaid (but the intent is for the employee to use paid sick leave time to cover);
  – Next 10 weeks is paid at 2/3 of typical wage or salary rate, not to exceed $200 per day or $10,000 for the entire leave period.
Emergency Family and Medical Leave Expansion Act

- Paid family leave available only if an employee is unable to work or telework because of the need to care for children if schools are closed or daycare is unavailable as a result of a public health emergency.
- Leave is NOT available to recover from a COVID-19 diagnosis, or to self quarantine.
  - No blanket exemption for small employers.
  - Secretary of Labor can exempt health care providers, emergency responders, and small businesses with fewer than 50 employees if leave would jeopardize the business.
- In some cases, employer with fewer than 25 employees is excused of requirement to reinstate.
- No private cause of action for employers smaller than 50.
Reimbursement of Paid Leave Benefits

• Payments by employers for paid sick time and paid leave are 100% reimbursed by the federal government.
• Includes the premiums on medical benefits that an employer is obligated to pay as a result of a leave mandated by the FFCRA.
• Mechanism to receive pay is a credit against quarterly social security tax remittances to the government.
• If the amount paid in leave benefits exceeds the tax obligation, employer receives a refund.
Questions

• What if I want to start providing these benefits to employees before April 1? Can I still qualify for the tax credits?

• How do I count to 500?
  – Can multiple sister companies be counted together to surpass the 500 employee threshold?
  – A company had 750 employees on February 1, 2020. Through layoffs in early March, it now has only 100 employees. Is it covered by the paid sick leave and family leave requirements?

• If an employee used some of their FMLA allotment in the past year, are they still eligible for the full 12 weeks of family leave, or do they only get whatever is left of their normal 12 week leave period?
Questions

- Does an employer providing paid sick leave or family leave have to continue to pay the employer portion of health care benefits?
- If an employee is off on a paid sick leave or family leave, are they immune from layoff while on that leave?
- What is a "healthcare provider" under the Act that can be exempted?
- How will small businesses be able to demonstrate that compliance with the act will jeopardize the business?
- Can an employer require an employee to use paid time during the unpaid portion of the family leave?
Questions

• If both parents work for the same employer, are both eligible for the child care leave, either concurrently or consecutively?
• What certification can be required for leaves, whether for paid sick leave or paid family leave?
• Will the paid child care leaves remain available after schools would have closed anyway?
• Are employees who work outside of regular school hours eligible for paid child care leaves?
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Jim’s practice focuses on the defense and trial of employment cases in federal and state courts, as well as counseling, advising and training corporations regarding their obligations under state and federal employment laws. He represents a broad range of clients in a variety of employment and discrimination related matters, including representation in administrative proceedings before the EEOC, defense of lawsuits involving race, national origin, age, and sex discrimination, defense of sexual harassment claims, defense of disability and religious accommodation claims under state and federal law, and the defense and prosecution of claims for alleged violations of covenants not to compete. He also assists employers in the drafting and implementation of employment policies, as well as the negotiation of employment and severance agreements with highly placed corporate executives.
Dan advises employers on labor and employment matters including affirmative action plans; wage and hour issues; and discrimination and harassment claims. He works with employer clients to bring their existing workplace policies into compliance with best practices in the human resources field, and he provides day-to-day counseling which enables clients to make wise decisions in human resource matters. Understanding the frequent and complex employment issues continually faced by today’s employers, Dan has designed his practice so that he is readily and quickly available to his clients. He is a frequent speaker and author on employment matters and labor-related legislative changes, with a particular focus on wage and hour issues. He is Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization.