

## Client Alert

### **House Passes Emergency Coronavirus Legislation That Imposes New Paid Leave Mandates on Employers and Provides Tax Relief**

March 16, 2020 – We previously published a [guide for employers](#) on managing the spread of coronavirus in the workplace in a manner that complies with applicable laws. Responding to the coronavirus emergency, the U.S. House of Representatives has passed the [Families First Coronavirus Response Act \(H.R. 6201\)](#) (the "**Bill**"), which is expected to be passed promptly by the Senate early this week. Among other measures, the Bill contains several important paid leave provisions affecting employers. Although these provisions may change before the Bill is signed into law, employers need to be prepared to implement these requirements on short notice.

#### **Only Smaller Employers Affected (For Now)**

Under the current version of the Bill, the paid leave provisions discussed below only apply to employers with fewer than 500 employees ("**Applicable Employers**"), as well as to public agencies. It is possible, however, that these (or similar) rules will be extended to larger employers.

#### **Emergency Paid Sick Leave Act**

The Bill would require Applicable Employers to provide their employees with coronavirus-related paid sick leave, compensated (i) at the employee's regular rate of pay for leave needed to quarantine or seek a diagnosis or preventive care for coronavirus, or (ii) at 2/3 of the employee's regular rate of pay for leave to care for a family member for such purposes or to care for a child whose school has closed, or whose child care provider is unavailable, due to the coronavirus.

The length of such paid leave would be (i) 2 weeks (80 hours) for full-time employees, and (ii) for part-time employees, the number of hours equal to the number of hours that such employee works on average in a 2-week period.

Applicable Employers must offer such paid leave in addition to any paid leave that they already provide under their existing leave policies, and may not require employees to take other sick leave before taking such paid leave.

Applicable Employers will be required to post a notice informing employees of their rights to such leave.

## **Emergency Family and Medical Leave Expansion Act**

The Bill would also require Applicable Employers to provide their employees who have been employed for at least 30 days with the right take up to 12 weeks of job-protected paid leave under the Family and Medical Leave Act ("**FMLA**") to be used for any of the following reasons:

- To adhere to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus;
- To care for an at-risk family member who is adhering to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus; and
- To care for a child of an employee if the child's school or place of care has been closed, or the child-care provider is unavailable, due to a coronavirus.

The initial 14 days of covered leave may be unpaid, but the remaining duration of such leave must be compensated at the rate of at least 2/3 of the employee's regular rate of pay.

Employees may choose to use accrued personal or sick leave during the first 14 days, but may not be required to do so.

## **Union Employers May Comply by Contributing to Multiemployer Plan**

Applicable Employers that are party to a collective bargaining agreement may generally satisfy the above requirements by making contributions to the union's multiemployer plan on behalf of each affected employee based on the hours of paid sick time or paid family leave time to which the employee is entitled.

## **Effective Date**

The above requirements would go into effect not later than 15 days after the Bill is enacted into law and would remain in effect until December 31, 2020.

## **Payroll Tax Relief for Employers**

The Bill intends to provide financial relief to Applicable Employers that comply with the new leave requirements by providing such employers with a refundable tax credit against the employer portion of Social Security tax in an amount equal to the paid sick leave wages they are required to pay under the Emergency Paid Sick Leave Act and the

Emergency Family and Medical Leave Expansion Act for each calendar quarter (subject to caps). If such credit exceeds the employer's total Social Security wage tax liability for all employees for any calendar quarter, the excess credit is refundable to such employer.

Finally, the Bill exempts all wages required to be paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act from the employer's portion of Social Security tax.

For questions about the Bill and the various employment and benefits considerations related to the coronavirus, please reach out to your primary attorney contact at our firm, or to any of the attorneys listed below.

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