Federal Law Provides Paid Leave for COVID-19

March 20, 2020

In an effort to provide relief to families and workers affected by the coronavirus disease (COVID-19), the Families First Coronavirus Response Act (the "Act"), H.R. 6201, goes into effect on April 2 and provides two new forms of paid leave for employees affected by COVID-19 by temporarily expanding the Family Medical Leave Act and providing for Emergency Sick Leave. The Act applies only to employers with fewer than 500 employees and sunsets on December 31, 2020. Any unused leave does not carry over into 2021. All leave paid under these provisions is reimbursable to employers through federal tax credits.

Expanded FMLA for Child Care

The Act expands FMLA to provide up to 12 weeks of paid leave for employees who have been on the job for at least 30 days and are unable to work or telework due to a need for leave to care for the employee's child (under 18 years of age), if the child's school or place of care is closed or the childcare provider is unavailable due to COVID-19 (this relief is significantly narrower than the House's original bill.) Under this provision, the first 10 days of leave are unpaid, but an employee may elect to use any accrued paid leave during that period, including the Emergency Sick Leave described below. The final 10 weeks are paid at two-thirds of the employee's regular rate, up to $200 per day, and $10,000 in the aggregate.

Employees retain FMLA job restoration rights, unless the employer is very small (25 or fewer employees) and the employee's position no longer exists due to an economic downtown or other circumstances caused by COVID-19. However, the small employer must make reasonable attempts to contact the employee and restore the employee to an equivalent position for up to a year following the employee's leave. In addition, employers of health care providers and emergency responders may exclude their employees from these provisions.

Emergency Sick Leave

The Act immediately provides 80 hours of emergency sick leave for full-time employees in six situations: (i) employees who are quarantined due to COVID-19, (ii) employees who are in self-quarantine due to COVID-19, (iii) employees who are symptomatic and seeking diagnosis of COVID-19, (iv) employees who are caring for someone (not limited to family members) in the first two categories, (v) employees caring for their child if the child's school or place of care is closed or the child's care provider is unavailable due to COVID-19, or (vi) employees experiencing any other substantially similar condition (to be specified by the Secretary of Health and Human Services). The Act provides part-time employees with leave equivalent to their average hours worked in a two-week period.

Employees in the first three categories are entitled to full pay at their regular rate, up to $511 per day and $5,110 in the aggregate. Employees in the last three categories are entitled to pay at two-thirds of their regular rate, up to $200 per day and $2,000 in the aggregate. Employers are required to post a notice about the emergency sick leave, and a model notice is expected in the next week. Employers cannot require workers to find replacements to cover their hours or discriminate against workers who request sick leave. In addition, employers of health care providers and emergency responders may exclude their employees from these emergency sick leave provisions.

Further Developments

The Act leaves a number of questions, particularly for employers who are planning for temporary or permanent workforce reductions due to the COVID-19 pandemic. We expect to see regulations for the Act in the immediate future, as well as further economic stimulus measures, and will post updates on our website regularly. As you all know, this crisis is evolving daily and the changes will lead to new or revised laws concerning employment. In the meantime, if you have specific questions about your workforce plans or about the Act, please contact your Goulston & Storrs attorney or any member of the COVID-19 Task Force.