

Coping with the coronavirus in the workplace, part three

By Eli Kantor
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President Donald Trump signed the Family First Coronavirus Response Act into law on March 18, which will be effective through Dec. 31. This law was created to provide relief for employees adversely affected by the coronavirus.

Covered Employers

The bill applies to certain public employers, and private employers with fewer than 500 employees. Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave

Act are covered by the paid sick leave provisions. Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability *if the leave requirements would jeopardize the viability of the business as a going concern*. Employers of health care providers or emergency responders may elect to exclude such employees from eligibility for the leave provided under the act.

Employees Who Qualify and What They're Entitled To

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

1) is subject to a federal, state or local quarantine or isolation order related to COVID-19, (Under Gov. Gavin Newsom's Safer at Home Act

this applies to every employee who works for a nonessential business); or

2) has been advised by a health care provider to self-quarantine related to COVID-19;

3) is experiencing COVID-19 symptoms and is seeking a medical diagnosis

The employees who fall into these categories are entitled to receive 80 hours of paid sick leave calculated at 100% of their regular rate of pay or 100% of the applicable minimum wage, whichever is higher. Payment is capped at \$511 per day and \$5,110 in the aggregate over a two-week period.

Two-Thirds Regular Rate

There is a different pay structure for employees who fall into the below categories. The employees who are:

1) caring for an individual subject to an order or in self-quarantine

2) are caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or

3) are experiencing any other substantially similar condition specified by the secretary of Health and Human Services, in consultation with the secretaries of Labor and Treasury;

are entitled to receive 80 hours of paid sick leave calculated at two-thirds their regular rate or two-thirds the applicable minimum wage, whichever is higher. Payment is capped at \$200 per day and \$2,000 in the aggregate over a two-week period. **FFCRA Does Not Replace Existing Sick Pay**

Section 5107 of the FFCRA states "Nothing in the Act shall be construed to diminish rights or benefits to which an employee is already entitled." Thus, sick leave pay under FFCRA is in addition to any sick leave pay employees are entitled to under California law, city law, or any employers' current company policy. Furthermore, Section 5102(e)(2)(B) forbids an employer from requiring

an employee to use other forms of paid leave before using sick pay under FFCRA

Expanded Family and Medical Leave

Employees who have been employed for at least 30 calendar days, and are unable to work because they are caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19 are entitled to an additional 10 weeks of expanded family and medical leave at two-thirds their regular rate of pay or two-thirds the applicable minimum wage, whichever is higher. The pay is capped at \$200 per day and \$12,000 in the aggregate over a 12-week period. This expanded family and medical leave only applies to those employees who are caring for a child whose school or place of care is closed.

Tax Credit

Under the FFCRA, employers will be receiving a 100% tax credit, dollar for dollar for all money paid out for this sick leave.

Exemption

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

Notice

Employers must post and keep posted in conspicuous places in their premises a notice of the Law to be prepared by the secretary of Labor.

Conclusion

The FFCRA will impact all employers statewide as they figure out ways to restructure. As the situation continues to evolve, employers should contact experienced legal counsel to keep them up to date and to help them remain compliant with laws and legislation. ■

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