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The Emergency Paid Sick Leave Act and Amendments to the FMLA

The Families First Coronavirus Response Act was signed into law on March 18, 2020, and creates two primary responsibilities for employers. The first is to give unpaid FMLA leave for two weeks and partial pay FMLA leave after the two weeks to employees who have a qualifying need due to a public health emergency. A qualifying need is an employee who is unable to work due to a need for leave to care for a son or daughter under 18 years of age if the school or place of care for the child is unavailable due to the public health emergency. The first two weeks are unpaid, but the employee may choose to use available PTO, sick time, vacation time or personal time.

Subsequent to the first 10 days, the employer shall provide paid leave, in an amount not less than two-thirds of the employee's regular rate of pay for the average hours the employee worked. This pay shall not exceed \$200 per day, or \$10,000 in the aggregate.

This also provides for restoration to position for these employees. This does not apply to employers with less than 25 employees where the position is no longer available due to economic conditions or operating conditions, and where the employer makes reasonable efforts to restore, and where the employer contacts the employee if an equivalent position becomes available.

This requirement is for employers who are under 500 employees. If the employer has fewer than 50 employees, and the imposition of this requirement would jeopardize the viability of the business, they may seek an exemption. Regulations related to those exemptions has not yet been released.

The Emergency Paid Sick Leave Act provides wages to: (a) employees who are subjects of federal, state or local quarantines; (b) employees who have been advised by health care professional to self-quarantine; (c) employees who have symptoms and are seeking a medical diagnosis; (d) employees caring for someone who is quarantined by (a) or (b); or (e) employees caring for children if school or childcare is closed. These employees are to be paid an amount not to exceed \$511 per day. An exemption is available to employers with less than 50 employees if the imposition of this requirement would jeopardize the viability of the business as a going concern.

These initiatives are going to be paid for by tax credits. Employers are to reduce their quarterly social security payroll taxes by the amount necessary to reimburse them for this cost. If the quarterly payment does not cover the cost, the IRS will reimburse them for the remaining cost.

One question that has arisen is whether Governor Wolf's "stay at home" directive is a quarantine within the meaning of this Act. Our advice is to treat Governor Wolf's order as a quarantine. This is obviously a fluid situation, and we will provide guidance as it becomes available. Please feel free to contact Tom May at 412-392-5437.

Please [click here](#) to refer to the Department of Labor website.



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