

# Labor & Employment Alert

## MESSNER REEVES LLP

March 20, 2020



**John K. Shunk**

303.605.1564

jshunk@messner.com



**LaRona Mondt Kitzinger**

303.454.5458

lmond@messner.com

### Federal Families First Coronavirus Response Act

On March 18, 2020, President Trump signed the federal Families First Coronavirus Response Act which, among other things, adopts emergency paid sick leave, expands the Family and Medical Leave Act, and allows employers tax credits for providing applicable paid leave. This article summarizes the provisions of the Act that are relevant to employers.

Note, proper compliance will require a highly fact-intensive inquiry with respect to applicability and implementation. As such, we highly recommend consulting a lawyer at all stages to ensure compliance. Further, the Secretary of Labor has the authority to issue regulations to exempt small businesses with fewer than 50 employees where the imposition of these requirements would jeopardize the viability of the business as a going concern and to ensure consistency between the relevant provisions of the Act. We will closely monitor developments on regulations for updates and clarifications to the Act.

#### Emergency Paid Sick Leave Act

*Effective April 2, 2020 through December 31, 2020*

Employers with as few as 1 and up to 500 employees must provide employees with up to two weeks of paid sick leave in the following situations:

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
- The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Leave for the employee must be paid at the employee's regular rate. Leave to care for an employee's family member must be paid at 2/3rds of the employee's regular rate.

An employer cannot require an employee to use other paid leave provided by the employer before the employee uses the paid sick time under the law. Full-time employees are entitled to 80 hours of leave, and part-time employees are entitled to the typical number of hours that they work in a typical two-week period. Paid

sick time terminates when the need for paid sick time terminate or the two-week period is complete.

An employer cannot require an employee to use other paid leave provided by the employer before the employee uses the paid sick time under the law. Full-time employees are entitled to 80 hours of leave, and part-time employees are entitled to the typical number of hours that they work in a typical two-week period. Paid sick time terminates when the need for paid sick time terminate or the two-week period is complete.

The law prohibits employers from discharging, disciplining, or discriminating against any employee who takes leave in accordance with the law. Failure to provide paid sick leave or unlawful termination will result in penalties for failure to pay minimum wage and wrongful termination under the Fair Labor Standards Act.

Employers must post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor, of the requirements of the law.

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

*Effective April 2, 2020 through December 31, 2020*

Employers with as few as 1 and up to 500 employees must provide employees up to 12 weeks of job-protected leave under the Family and Medical Leave Act (FMLA). Eligible employees must have been on the employer's payroll for 30 days, and may use emergency FLMA leave to:

- Care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.
- "Public health emergency" means an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

The first ten business days of leave may be unpaid. An employee may choose to substitute accrued vacation leave, personal leave, or other medical or sick leave during this period, but an employer may not require an employee to do so. After the two weeks of unpaid leave, if the leave is still necessary per the above, employers must provide paid FMLA leave at a rate of no less than two-thirds of the employee's usual rate of pay for the number of hours the employee would otherwise be normally scheduled to work, with a cap of \$200 per day and \$10,000 total payments.

As with traditional FMLA leave, this leave is job-protected, meaning an employer must return the employee to the same or equivalent position upon their return to work with limited exceptions.

### **Tax Credits for Emergency Paid Sick Leave and Family and Medical Leave**

The law provides a series of refundable tax credits for employers including a tax credit for employers equal to 100% of qualified required sick leave wages paid by the Emergency Paid Sick Leave Act and 100% of qualified required family leave wages paid by the Emergency Family and Medical Leave Expansion Act. We recommend that you reach out to your tax accountant regarding these tax credits.

Please do not hesitate to contact Messner Reeves attorneys John Shunk or LaRona Kitzinger if you have further questions or would like assistance complying with this law.