



March 19, 2020

COVID-19's Impact on Employers: Just the Facts

On March 18, 2020, President Trump signed into law a bill with two significant provisions impacting employers with fewer than 500 employees. It will become effective no later than 15 days after it is enacted and it will sunset on December 31, 2020. We have provided a brief overview of this law below. These issues are complex, fluid, and unprecedented. We are glad to answer any questions and help you navigate these difficult issues.

Emergency Family and Medical Leave Expansion Act

- Provides **paid** FMLA leave for an employee who is unable to work (or telework) in order to care for the employee's minor son or daughter when the child's school or care provider is unavailable due to a public health emergency
- Applies to all public agencies and private employers with fewer than 500 employees
- Covers all employees employed for at least 30 days or more
- The first 10 days of such leave is without pay (employee may choose to substitute accrued leave) but the remaining leave (up to 12 weeks) is paid by employer at two-thirds of the employee's normal compensation
- The paid leave shall not exceed \$200 per day or \$10,000 in aggregate
- Employers of health care providers or first responders may exclude such employees
- No private right of action against an employer with fewer than 50 employees within a 75-mile radius

Emergency Paid Sick Leave Act

- Provides 80 hours (or 2 weeks for part-time employees) of paid sick leave for employees who are unable to work or telework because of one of the following six qualifying reasons related to COVID-19:

- The employee is subject to a federal, state, or local quarantine or isolation order
- The employee has been advised by a health care provider to self-quarantine
- The employee is seeking a medical diagnosis due to symptoms of COVID-19
- The employee is caring for an individual subject to a quarantine order or health care provider recommendation to self-quarantine
- The employee is caring for a minor child whose school or care provider is unavailable

-The employee is experiencing symptoms of a substantially similar condition.

- Applies to private employers with fewer than 500 employees and public employers who employ 1 or more employees
- Available to all employees without regard to the length of employment
- The amount of compensation depends on reason for the leave

-Regular rate is used for employees under a quarantine order, advised to self-quarantine by a health care provider, or are seeking a medical diagnosis for symptoms of COVID-19.

(Compensation cap of \$511 per day up to \$5,110 in aggregate)

-Employees who need to take leave to care for another or for a similar condition are only entitled to 2/3 of the two-week compensation amount (up to \$200 per day or \$2,000 in aggregate)

- Employers of health care providers or emergency responders may exclude such employees from emergency paid sick leave requirements
- No requirement to exhaust other accrued paid leave
- The Act contains a posting requirement and the Secretary of Labor is required to issue a model notice within 7 days of enactment

Guidance Issued By the EEOC

- An employer may ask employees if they are experiencing any of the symptoms of COVID-19 and may measure employees' body temperatures to screen employees
- An employer may require employees returning to work to provide a doctor's note certifying their fitness for duty
- An employer may require employees to stay home if they have symptoms of COVID-19
- An employer may withdraw a job offer to an applicant who has COVID-19 or symptoms associated with the virus when the employer needs the applicant to start immediately

Some Issues for Employers to Consider:

- Whether employees are entitled to pay or notice under the WARN act if the business has been temporarily closed (voluntary or involuntary)
- The other provisions of the FMLA and ADA are still in effect, including the confidentiality requirements for medical documentation
- Small employers (between 2 to 100 employees) may be eligible for a short-term, interest-free loan from the state of Florida
- The impact of a temporary shutdown on employee benefits
- Whether employers can require employees to work even when the employees are concerned about exposure to COVID-19
- Whether employees are health care workers or first responders
- Whether the Secretary of Labor will issue any additional regulations relating to the eligibility of health care workers or first responders or exempting employers with fewer than 50 employees
- Whether an employer can require certifications of the need for paid FMLA leave
- Whether there are collective bargaining implications with the implementation of the paid leave provisions or other COVID-19 responses
- Whether telework policies need to be adjusted
- Whether employers can cancel use of annual leave or vacation
- Whether governing boards of public or private entities need to meet to approve the implementation of the paid leave provisions or other COVID-19 responses

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