

Dear School Leaders,

The federal and state initiatives continue to come in at a steady clip. We are monitoring the developments closely.

Attached is a memorandum summarizing the key elements of the federal Families First Coronavirus Response Act passed by Congress this week.

Drummond Woodsum will be hosting a free webinar on Tuesday, March 24, 2020 to discuss this significant federal law as well as the Executive Order issued by Governor Mills on March 19, 2020 concerning pay continuation for hourly school employees. The effect of the Governor's order is to require that hourly employees may continue to be assigned work and should continue to receive the wages, benefits and leave rights that they have under current contracts and laws, as well as the emergency federal law. We will provide our collective thinking on specific questions about these new enactments during the webinar.

Information on how to register and connect to the webinar will follow.

Sincerely,

Pete Felmlly

ALERT: CONGRESS PASSES FAMILIES FIRST CORONAVIRUS RESPONSE ACT

On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act (the Act). This new law, which will take effect on April 2, 2020, includes a number of different provisions, including several important employment provisions providing certain employees protected paid leave benefits. Although the law requires many employers to offer their employees paid sick time and job protected leave, it also provides that private employers can receive tax credits to offset some of the costs associated with these leave benefits.

We summarize the crucial provisions of the new law below. Employers with questions about the new law or how it must be implemented should contact a member of our Labor and Employment team. We are happy to assist you as needed.

Emergency Paid Sick Leave Act

Mandatory Paid Sick Leave. This Act requires covered employers to provide employees with two weeks of paid sick leave in the following circumstances:

1. The employee is subject to federal, state, or local quarantine or isolation related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. The employee has exhibited symptoms of COVID-19 and is seeking a medical diagnosis;
4. The employee is caring for an individual subject to quarantine for the reasons stated in (1) or (2) above;
5. The employee is caring for a child whose school or daycare has closed;

6. The employee is experiencing any other substantially similar conditions specified by the Secretary of Health and Human Services.

Rate of Compensation. An employee taking leave because he or she is under quarantine or seeking medical treatment for COVID-19 like symptoms (paragraphs 1-3 above) is entitled to 100% of their regular rate during their period of leave, up to \$511 per day (up to \$5,110 total). An employee taking leave because he or she is caring for someone else under quarantine, because the employee's child's school or daycare is closed, or because the employee is experiencing symptoms specified by the Secretary (paragraphs 4-6 above) is entitled to two thirds of their regular rate, capped at \$200 per day (up to \$2,000 total).

Amount of Leave. Full-time employees are entitled to up to 80 hours of emergency paid leave. Part-time employees are entitled to the typical number of hours that they work, on average, over a two-week period, up to 80 hours. An employee's eligibility for leave expires when the need for the leave terminates or on December 31, 2020, whichever occurs sooner.

Employee Eligibility. This benefit is available to all employees, regardless of how long they have worked for the employer.

Covered Employers. The Act applies only to private employers with fewer than 500 employees. It applies to all public employers.

Relationship to Existing Paid Leave Policies. This leave applies in addition to any existing paid leave offered by an employer, including any additional leave offered prior to the signing of this bill. Employers are prohibited from changing their leave policies to reduce time available for employees so as to avoid providing this leave. Employers may not require employees to exhaust other paid leave benefits before accessing this leave.

Prohibition on Requiring Employee to Find Replacement. An employer may not require an employee to search for or find a replacement employee as a condition of receiving sick leave under the Act.

Posting. Each employer must post and keep posted, in conspicuous places on the premises of the employer where employee notices are usually posted, a notice to be prepared or approved by the Secretary of Labor. This notice has not yet been published.

Relationship to Collective Bargaining Agreements. The Act may not be interpreted to diminish an employee's rights under a collective bargaining agreement or existing employer policy.

No retaliation. An employer may not discharge, discipline, or discriminate against an employee who takes this leave, files a complaint under this Act, or testifies in a proceeding concerning this Act.

Enforcement. An employer who violates the Act will be considered to have failed to pay minimum wages in violation of the Fair Labor Standards Act and be subject to the penalties under that law.

Regulations. The Secretary of Labor is authorized to issue regulations under the Act. The Act permits the Secretary to adopt regulations permitting employers of EMS personnel and health care providers to opt out. It also permits the Secretary to adopt regulations exempting employers with less than 50 employees in the event required leave would jeopardize ongoing viability. To date, no regulations have been proposed.

Family and Medical Leave Expansion Act

FMLA Expansion. This Act amends the Family and Medical Leave Act of 1993 by creating a new category of leave under the FMLA for a "qualifying need related to a public health emergency." This leave is available when an employee is unable to work (or telework) because the employee has to take leave to care for a child under the age of 18 because the child's school or daycare has closed due to a COVID-19-related public health emergency declared by the federal, state, or local government. Eligible employees may up to take up to 12 weeks of protected leave for this qualifying reason.

Covered Employers. The Act's modifications apply only to private sector employers with fewer than 500 employees. Public sector employers are covered regardless of size.

Eligible Employees. Employees who have been on the job for at least 30 days are eligible for FMLA for the above-stated qualifying reason. Note that this is a significant change from typical FMLA eligibility requirements. Of note, employers of health care providers and emergency responders are permitted to *exclude* such employees from taking leave for the above-stated qualifying reason.

Compensation. The first ten (10) days of leave taken under this provision, like typical FMLA leave, may be unpaid. Employees may elect to use sick leave (including Emergency Paid Sick Leave discussed above) or PTO to receive pay during this period of time. After this initial period, employees who take leave under the new expansion provision are entitled to compensation at two thirds of their regular rate of pay up to \$200 per day (up to \$10,000 total).

Benefits. The health insurance continuation portions of the FMLA are unchanged by the FMLA expansion. Therefore, employees who take leave for the above-stated qualifying reason should be provided health insurance on the same terms and conditions as an employee who is actively at work.

Reinstatement. Employees who take FMLA are entitled to return to their same or equivalent position when their leave is exhausted, except in certain circumstances, including, generally, position elimination. Of note, the FMLA expansion creates special rules for employers with less than 25 employees.

Regulations. The Act authorizes the Secretary of Labor to issue regulations exempting employers with fewer than 50 employees.

Legal Disclaimer: *The information provided in this alert does not, and is not intended to, constitute legal advice; instead, all information and content is provided for general informational purposes only.*