

March 23, 2020

Implementing the Families First Coronavirus Response Act

President Trump signed the “Families First Coronavirus Response Act” (“FFCRA”) on March 18, 2020, and the law takes effect on April 2, 2020. This leaves businesses are asking how to implement the requirements, especially in such a short period of time. While questions will remain unanswered until the Department of Labor and Internal Revenue Service provide more detailed regulations, below is some pertinent information to help you take steps to implement the new laws.

What does the FFCRA Require? The law provides for paid leave for employees of companies with fewer than 500 employees in certain circumstances and for specified amounts. The law takes effect on April 2, 2020 and ends on December 31, 2020. These leave benefits are in addition to leave already provided by an employer and under current laws (i.e. Paid Sick and Safe Leave, Washington Paid Family & Medical Leave).

- **Paid Sick Leave.** To qualify for Paid Sick Leave, an employee must not be able to work or telework due to i) a government order/isolation order, ii) advisement from their healthcare provider to self-quarantine, iii) symptoms for which they are seeking medical diagnosis/treatment, or iv) caring for a family member subject to quarantine or school closure. The amount received by an employee for selfcare is capped at \$511/day and \$5,110 total (10 days). An employee providing care for a family member may receive \$200/day and \$2,000 total (10 days). A part-time employee’s leave shall be based on the average of the employee’s hours over two weeks.
- **Paid Family & Medical Leave.** To receive PFML under the new law and the related job protection for up to 12 weeks, an employee must be unable to work or telework *due to caring for a child because of a school closure*. The first 10 days of such leave will not be paid (Paid Sick Leave will cover); any leave beyond the first 10 days will be paid at 2/3 of the employee’s regular rate of pay and \$12,000 total.
- **Unused leave.** Unused leave will not carry over to 2021 and is not required to be paid out upon an employee’s separation from employment.
- **Unemployment.** An employee cannot receive unemployment benefits and Paid Sick Leave simultaneously.
- **Notice to Employees.** Employers will be responsible for notifying employees of these new leave benefits. The DOL is expected to provide the required notice to be posted by employers with other mandatory posters this week.

- **Notice to Employer.** Where possible, an employee should give their employer advance notice of their need to take leave. After the first workday of Paid Sick Time, employers may require employees to follow reasonable notice procedures to continue to receive Paid Sick Time.

How Do I Cover These Costs?

- **Tax relief is available.** Businesses that are required to provide emergency paid sick leave and emergency paid family and medical leave under the Act will be eligible for tax credits.
 - For an employee unable to work because of Coronavirus quarantine, self-quarantine, or Coronavirus symptoms, an employer may receive a refundable credit for the leave at the employee's regular rate of pay.
 - For an employee caring for someone with Coronavirus or caring for a child because of a school closure or unavailability of childcare, an employer may claim a credit of two-thirds of the employee's rate of pay.
 - An additional tax credit may be provided an employer based on its costs to maintain health insurance coverage for the employee during the leave period.
 - The tax credits available to an employer equal the amounts (including the caps) to which an employee is entitled under the law.
 - The filing and payment deadline for income taxes for individuals and businesses has been extended to July 15, 2020. There is no need to filing a request for an extension unless you require one beyond the July 15, 2020 deadline.
- **How to get tax relief.** Businesses may retain amounts they would normally pay the IRS and to receive additional refunds from the IRS in the event the amounts withheld do not cover their costs.
 - Instead of paying the IRS the amounts of federal income taxes, social security and Medicare taxes any employer typically withholds from an employee's paycheck, an employer will be able to retain a portion of the withheld taxes equal to the amount of paid leave.
 - If the payroll taxes are not enough to cover the leave paid, an employer will be able to file a request for an accelerated payment from the IRS, which are to be processed in two weeks or less. *Further details for this process are expected to be released by the IRS this week.*
 - Similar tax credits are available to self-employed individuals to reduce their estimated tax payments.

How Do I Comply in Such a Short Period?

- **Enforcement.** The law is effective April 2 and, while that is not that far away, the Department of Labor is providing a 30-day grace period beyond April 2 to allow employers time to come into compliance with the law. So long as an employer is acting reasonably and in good faith to

comply with the law, the DOL will not seek to enforce the law as its primary focus will be assisting employers with compliance.

- **Consider whether your business is exempt.** The law allows certain exemptions for small businesses. Employers with fewer than 50 employees will be eligible for an exemption from the leave requirements if they will jeopardize the business' ability to continue. Employers with fewer than 25 employees may be exempted from the job protection requirements under the Paid Medical and Family Leave portion. *Criteria and further guidance on this exemption will be provided by the DOL.*

As April 2 draws closer, DOL and the IRS will provide additional regulations to help you implement these provisions.

We are happy to provide a complimentary consultation to help you understand how these new leave provisions impact your business. Contact Michelle Bomberger at 425-250-0205 or contact@equinoxbusinesslaw.com.

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