

## **Summary of the New Federal Sick Leave Requirements of the Act**

Initially, the Act requires employers with fewer than 500 employees to offer sick leave to their employees who are unable to work or telework for the following COVID-19-related absences:

- An employee is subject to a federal, state, or local quarantine or isolation order regarding COVID-19;
- An employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- An employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- An employee is caring for an individual subject to the first two qualifying events listed above;
- An employee is caring for a minor child if the child's school or place of care has closed or if the childcare provider is unavailable due to COVID-19 precautions; or
- An employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services ("HHS").

Full-time employees can use up to 80 hours of sick time, while part-time employees can use proportionally less time, based on the average number of hours the employee works over a two-week period. During sick leave taken for the employee's own condition, employers must pay employees their regular rate of pay or the applicable minimum wage, whichever is higher. However, if the sick leave is taken to care for a family member or because the employee is experiencing a condition specified by HHS, the rate of pay is reduced to two-thirds of the employee's regular rate of pay. Leave benefits are limited to \$511 per day and \$5,110 in total per employee for the first three qualifying events listed above. As for the last three qualifying events, leave benefits are limited to \$200 per day and \$2,000 in total per employee.

An employee cannot carry over sick time into the next year, nor is an employee entitled to payment of unused sick time upon separation from employment. Employees will be able to use this sick leave beginning on April 2, 2020, regardless of their length of service with the Employer. Healthcare or emergency responder employers may elect to exclude healthcare workers from the Act. By March 25, 2020, the Department of Labor will publish a model notice that employers must conspicuously post in their workplaces. Similar to the FMLA amendments, the new sick leave law will become effective 15 days after the enactment of the Act - or April 2, 2020 - and will sunset on December 31, 2020.

To help employers shoulder the financial burden of paying for these additional benefits, the Act allows employers with fewer than 500 employees to claim a tax credit equal to 100% of qualified sick leave wages paid to employees. These credits, however, are limited to \$200 to \$511 per day, depending on the qualifying leave event, subject to other conditions and limitations. The aggregate number of days taken into account per employee may not exceed the excess of 10 over the aggregate number of days taken into account for all preceding calendar quarters. The tax credit also includes an allowance for certain health plan expenses allocated to wages paid pursuant to the Act. These credits will effectively help employers recover up to 10 days of wages paid to employees earning up to \$132,860 in income. For employees earning above

\$132,860, and who are absent for more than 10 days, the Act will help employers recover some of these wages.

### **Summary of the FMLA Expansions**

The Act also expands the FMLA to allow employees to use FMLA in situations where an employee is unable to work or telework to care for a minor child if the child's school or place of care has closed or if the childcare provider is unavailable due to a public health emergency regarding COVID-19. The prior version of the Act included several more FMLA qualifying events, which Congress has since scaled back.

Although the first 10 days of COVID-19-related FMLA leave is unpaid, employers must pay employees up to approximately 10 additional weeks of leave at the rate of two-thirds of the employee's regular pay rate, capped at \$200 per day and \$10,000 in total per employee. The 50-employee minimum applicable to current FMLA leave reasons does not apply to COVID-19-related leaves, although the Act gives the Department of Labor authority to limit the applicability of the Act to employers with fewer than 50 employees. Absent any regulations from the DOL, all employers with fewer than 500 employees must offer COVID-19-related FMLA leave to their workforce. The job protection requirements of the FMLA also apply to COVID-19-related leaves, but only to employers with 25 to 499 employees, if certain conditions are met. Any employee who has been employed for at least 30 calendar days will be eligible for this new type of FMLA leave. These amendments will be effective 15 days after enactment, which falls on April 2, 2020, and will sunset on December 31, 2020.

Similar to the sick leave requirement, the Act allows employers with fewer than 500 employees to claim a tax credit of 100% of qualified FMLA wages paid to employees, which is capped at \$200 per day and \$10,000 per quarter per employee. The FMLA tax credit is designed to help employers recover up to \$10,000 in wages for employees earning up to \$52,000 per year. For employees earning above \$52,000 per year, the tax credit will help employers recover a smaller portion of wages.

Please Note: The information contained in this letter is not legal advice and should not be relied upon or construed as legal advice. This letter is for general informational purposes only and does not purport to be complete or cover every situation. Please consult your own legal advisors to determine how these laws affect you.