

Update on the Family First Coronavirus Response Act

By: Michelle L. Kolkmeier (Senior Associate) and Katherine F. Cser (Senior Associate), Workplace Law Practice Group

Wednesday, March 18, 2020, President Trump signed into law the Family First Coronavirus Response Act (the "Act"), to provide families relief during the COVID-19 pandemic. The law will go into effect no later than April 2, 2020, and creates obligations to provide paid leave to employees affected by COVID-19.

The Emergency Family and Medical Leave Expansion Act

The Emergency Family and Medical Leave Expansion Act ("EFMLA") covers employers with less than 500 employees. It will allow eligible employees to take leave under the Family and Medical Leave Act to care for a son or daughter whose primary or secondary school has closed or whose child care provider has closed due to a public health emergency with respect to COVID-19.

Employees become eligible for this new protection after working for the employer for at least 30 days.

While the first two weeks of leave under the EFMLA may be unpaid, employees can elect to use their accrued vacation leave, personal leave, or medical or sick leave for unpaid leave. After ten days of leave under this new provision of the FMLA, employers must provide paid leave at an amount that is not less than two-thirds of an employee's regular rate of pay for the remaining ten weeks of FMLA leave. However, paid leave is capped at \$200/day and \$10,000 in the aggregate.

Paid leave must continue until the qualifying condition no longer exists, or after twelve weeks of leave have been taken.

The Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act ("EPSLA") requires employers with fewer than 500 employees to provide sick time if the employee is unable to work because the employee is:

1. Subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Advised to self-quarantine due to concerns related to COVID-19;
3. Experiencing symptoms of the Coronavirus and seeking a medical diagnosis;

4. Caring for an individual who is subject to a quarantine or isolation order related to the Coronavirus or who has been advised by a health care provider to self-quarantine;
5. Caring for a son or daughter whose school or place of care is closed or because the child care provider is unavailable, due to Coronavirus precautions;
6. 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.

Notably, an employer may not require an employee to use paid time off (or any other leave offered by the employer) prior to the emergency paid sick leave.

Duration of Leave

Employers must provide 80 hours of paid leave to full-time employees at the employee's regular rate. Part-time employees are entitled to an amount equal to the number of hours usually worked in a two-week period. For part-time employees, if the employee's schedule makes it impracticable to determine the amount of time "usually" worked in a two-week period, then the employer shall use the following:

1. The employee's average hours from the last six-month period. The period ends with the date the employee takes the leave and any hours the employee took a leave of any type; or
2. If the employee did not work over such a six-month period, then the reasonable expectation at the time of hire for the employee's hours per day.

The leave ends on the employee's next scheduled work shift following the end of his/her need for leave and this leave does not carry over from one year to the next.

Payment Caps on Total Payment Amounts

Employees are paid at their regular rate of pay except for a use described in circumstances (4), (5), or (6) above. Under those circumstances, the employee's required compensation is 2/3 of the regular rate of pay.

However, pay is capped at \$511/day and \$5,110 in the aggregate for a use described in circumstances (1) – (3) above and \$200 per day and \$2,000 in the aggregate for a use described circumstances (4) – (6).

Notice

Employers must post a notice related to the requirements described in this Act.

Exceptions

An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from application of the EFMLA and the EPSLA. Additionally, small businesses with fewer than 50 employees may be exempt from certain EFMLA and the EPSLA requirements when doing so would jeopardize the viability of the business as a going concern. Guidance regarding applicability of this exception is expected in the upcoming weeks.

Tax Credits

While employers are responsible for providing emergency leave under the EFMLA and the EPSLA, they will be entitled to a credit against their payroll taxes.

A myriad of situations may arise regarding the Coronavirus. Please contact any member of **Bodman's Workplace Law Group** if you need assistance. We will be providing frequent updates and FAQs as the situation develops.

WORKPLACE LAW PRACTICE GROUP

AARON D. GRAVES <i>Chair</i> 313.392.1075 agraves@bodmanlaw.com	JOHN T. BELOW 248-743-6035 jbelow@bodmanlaw.com	JOHN C. CASHEN 248.743.6077 jcashen@bodmanlaw.com
GARY S. FEALK 248-743-6060 gfealk@bodmanlaw.com	STEVEN J. FISHMAN 248.743.6070 sfishman@bodmanlaw.com	JOHN DAVID GARDINER 616.205.3123 jgardiner@bodmanlaw.com
MELISSA M. TETREAU 248.743.6078 mtetreau@bodmanlaw.com	BRENT R. SCOTT 616.205.3317 bscott@bodmanlaw.com	REBECCA C. SEGUIN-SKRABUCHA 313.393.7594 rseguin-skrabucha@bodmanlaw.com
KATHERINE F. CSER 248.743.6031 kcser@bodmanlaw.com	DAVID B. WALTERS 248.743.6052 dwalters@bodmanlaw.com	KAREN L. PIPER <i>Of Counsel</i> 248.743.6025 kpiiper@bodmanlaw.com