



## **Families First Coronavirus Response Act Passed March 18, 2020**

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On March 18, 2020, the Families First Coronavirus Response Act (the “FFCRA”) was signed into law. The law will go into effect on April 2, 2020 and is outlined below.

Overall, the law applies to employers with fewer than 500 employees and appears to exempt small employers with fewer than 50 employees when the imposition of these requirements would jeopardize the viability of the business.

### **Emergency Family and Medical Leave Expansion Act (EFMLEA)**

The EFMLEA extends the key entitlement of the Family Medical Leave Act to parents unable to work because of the COVID-19 pandemic and amends certain FMLA definitions.

#### **Key Provisions**

- Employers must provide 12 weeks paid leave to employees who have worked 30 calendar days for that employer; and are unable to work or telework due to closures of regularly-compensated childcare service providers or elementary/secondary schools following the declaration of a COVID-19-related public health emergency (the “PHE”) by a Federal, State, or local authority between April 2, 2020 and December 31, 2020.
- Allows for an employer fitting the above description a 10-day grace period, during which eligible employees are permitted to use any accrued sick, vacation, or unpaid leave they may have.
- After the 10-day grace period the employer must pay a regularly-scheduled, eligible employee no less than 2/3 their regular rate of pay for the hours they would normally work, provided that their pay not exceed \$200/day or \$10,000, in the aggregate.

### **The Emergency Paid Sick Leave Act (EPSLA)**

The EPSLA amends the Fair Labor Standards Act (“FLSA”) and mandates that an employer must pay sick leave to an employee – regardless of the length of their employment -- who is unable to work or telework. This is effective between April 2, 2020 and December 31, 2020.

- Full-time employees are entitled to 80 hours of paid leave.
- Part-time employees are entitled to leave based upon the average number of hours they generally work over a two-week period; or the average number of hours per day the employee worked in the six-month period before their leave begins.

The Act differentiates between primary impact (those diagnosed with COVID-19 or suspected of having the disease and awaiting diagnosis) and secondary impact (those caring for someone with the virus or having a child at home due to school closings) for available benefits to employees.

#### **Primary Impact Payment Benchmarks:**

- The rate of pay cannot be less than the greater of the employee’s regular rate of pay and minimum wage (whichever is the greater of Federal, State, or local)
- Payment is not required to exceed \$511/day or \$5110, in the aggregate.

#### **Secondary Impact Payment Benchmarks:**

- The rate of pay cannot be less than two-thirds of the greater of the employee’s regular rate of pay and minimum wage (whichever is the greater of Federal, State, or local)
- Payment is not required to exceed \$200/day or \$2000, in the aggregate.

**Other Noteworthy Provisions:**

- The leave shall not carryover from one year to the next
- An employee cannot be required to seek/find a replacement to cover their hours
- Employers of employees that contribute to a CBA may obtain payment from the fund/plan based on the hours they have worked under the CBA
- FLSA Penalties, including fines and imprisonment, apply to employers (i) who discharge, discipline, or discriminate against EPLSA-leave employees or (ii) who willfully violate the EPLSA
- The EPLSA does not limit the employee's entitlements under Federal, State, or local law; any CBA; existing employer policy, etc.
- EPLSA leave must be made available immediately and an employer cannot require the initial/prior use of another type of leave

**Further Action by the Department of Labor Required:**

- EPLSA requires the employer to post a notice to be made available by March 25, 2020.
- Although EPLSA establishes payment benchmarks (see above), the law directs the Secretary of Labor to publish specific paid leave calculation guidelines by April 2, 2020.

**Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISSA)**

The EUISSA authorizes the Secretary of Labor to fund and administer to States an unemployment trust fund in response to an anticipated increase in unemployment claims related to COVID-19. The law also directs the Secretary of Labor to aid "States in establishing, implementing and improving the employer awareness of short-term compensation programs to help avert layoffs, including by providing technical assistance and guidance."

Employers will need to provide notice of eligibility of unemployment at the time of separation.

Employees will have the waiting week waived and will not be held to work search requirements.

**Health Plan Provisions: No Cost-Sharing, Pre-Authorization Required for Care**

The FFCRA's health provisions prohibit certain barriers to accessing coverage. Specifically, group health plans and health insurance plans may not impose cost sharing (i.e., deductibles, copays or coinsurance) or pre-authorization on covered individuals who seek in-person (including urgent care or emergency room visits) or telehealth medical services, or approved COVID-19 diagnostic tools.

**Tax Credits for Paid Sick and Paid Family and Medical Leave**

Under the FFCRA, employers may elect to apply tax credits for each calendar quarter in the amount of 100% of the qualified sick leave wages paid, subject to certain limitations. Hauser clients are encouraged to consult their tax advisors on the tax consequences of any action taken under the FFCRA.

**Hauser will continue monitor all active and pending legislation relative to COVID-19 and we will update our clients accordingly.**

(March 22, 2020)

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