Engage PEO Client Alert:

All Clients: Families First Coronavirus Response Act

In response to the widespread effects that coronavirus has had on individuals across many different industries, Congress has enacted the Families First Coronavirus Response Act, which goes into effect "15 days after President Trump signs the bill."

In addition to providing for free Coronavirus testing, and funding for other public benefits, the Families First Coronavirus Response Act also provides mandatory paid sick leave under two mechanisms: One is an expansion of existing leave laws under the Family Medical Leave Act (FMLA) framework, which includes a paid leave provision under its terms, and the other is an Emergency Paid Sick Leave program.

Emergency Family and Medical Leave Expansion Act (EFMLEA)

Which employers are covered?

All employers with fewer than 500 employees. Thus, employers with fewer than 50 employees that were not previously subject to FMLA requirements will now be required to allow leave for certain COVID-19 related absences.

Which employees are covered?

Existing FMLA requirements mandate that an employee must have worked for the employer for at least one year and work at least 1250 hours during the previous year to qualify for leave. The new legislation lowers the eligibility requirements of existing FMLA to include any employee working for the employer for more than 30 days and eliminates the hours requirement.

What reasons for leave are covered?

EFMLEA will provide twelve (12) workweeks of leave in a 12-month period to eligible employees who need leave due to various circumstances relating to coronavirus and the public health emergency that has arisen.

Employees may use the leave for following reasons:

Updated versions of the Act have eliminated other reasons for covered leave, and have narrowed the criteria to just the following reason:

- The care of a minor child because of school/childcare closure or if the provider is unavailable because of coronavirus.

Does the entire leave need to be paid?

No, the first 10 workdays of leave are unpaid. Employee can choose to substitute the first 10 workdays of unpaid leave with their accrued vacation, personal leave, or medical/sick leave.

How should pay be calculated?

After 10 workdays, employers must provide paid leave at no less than two-thirds of an employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act) and based on the number of hours the employee would have normally worked, but not to exceed $200 .00 per day or $10,000 in the aggregate.

The number of hours to be paid for employees who work part-time or irregular shifts are calculated by the average number of hours the employee worked for the six months prior to taking leave including hours for which the employee took leave of any type. Employees with less than six months of work prior to leave will be entitled to their reasonable expectation at hiring or their average number of hours they would have normally been scheduled to work.

Are there any other provisions?

Yes, a key provision of FMLA that will extend to EFMLEA is job restoration. Employers with at least 25 employees will be held to the same obligation as under regular FMLA, which requires employers to return any employee who has taken FMLA, or in this case leave under EFMLEA, to the same or equivalent position upon the return to work. Employers with fewer than 25 employees may be excluded from this requirement if a) the employee's position was eliminated due to an economic downturn or other circumstances caused by a public health emergency during the period of leave under EFMLEA, and b) the employer made reasonable attempts to return the employee to an equivalent position with equivalent employment benefits, pay and other terms of employment. If this is the case, the employer is required to make reasonable efforts to return the employee to work for up to a year starting on the earlier of (i) the date on which the qualifying need related to a public health emergency concludes or (ii) the date that is 12 weeks after the date on which the employee's EFMLEA leave concludes.

Are there any exceptions?

There will be some hardship exceptions for small businesses. The Secretary of Labor has the authority to issue regulations for good cause to exempt small businesses with fewer than 50 employees from the requirements of the EFMLEA when the imposition of such requirements would jeopardize the viability of the business as a going concern. However, it is unclear what those regulations will be at this time.

Emergency Paid Sick Leave Act (EPSLA)

Which employers are covered?

Similar to the EFMLEA, the EPSLA will apply to private small and midsize companies that employ fewer than 500 employees.

Which employees are covered?

Unlike the EFMLEA, all full-time employees, regardless of their tenure with the employer prior to the leave, will be eligible for 80 hours of sick leave (or two weeks, for part-time or irregular schedule workers).

What reasons for leave are covered?

The EPSLA allows an eligible employee to take paid sick leave for the following reasons:

1. Subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. Advised by a health care provider to self-quarantine due to COVID-19 concerns;
3. Experiencing COVID-19 symptoms and seeking medical diagnosis;
4. Caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
5. Caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
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.

How should pay be calculated?

Sick leave under the EPSLA must be paid at the employee's regular rate of pay. It will be at two-thirds rate of pay if leave is taken for the care of a family member (see reasons 4, 5, and 6 above). Part-time employees are eligible for the additional two weeks as well based on the average number of hours they worked over the last six months. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work over a two-week period.

Paid sick leave wages will be limited to $511 per day up to $5,110 total per employee for their own use and to $200 per day up to $2,000 total to care for others and any other substantially similar condition.

What if I already offer paid sick leave to my employees?

The EPSLA mandates that the two weeks of sick leave be provided in addition to any sick leave already granted, including sick leave granted by a state mandate. For example, five sick days are already required to be provided by employers by the State of New Jersey. Therefore, for absences related to the current public health crisis, employees will have at least fifteen (15) paid sick days in New Jersey. Similarly, if a company's policy or jurisdiction allows or requires more than that, then two weeks on top of what is currently offered now.

Engage will continue to keep clients informed of legislative developments related to COVID-19 and other employment law updates. As always, your HR Consultant and Account Manager are available to assist with your questions and concerns. We are here for you.