Families First Coronavirus Response Act
Understanding the new paid leave

Presented by:

My Chief People Officer
Solving people issues for your business
FFCRA New Leaves Effective 4/1/20 thru 12/31/20

1. **Emergency Paid Sick Leave Act**

   **Traditional FMLA Review**

1. **Emergency Family and Medical Leave Expansion Act**
Emergency Paid Sick Leave

• COVERED EMPLOYERS
  ▪ Private employers with less than 500 employees
  ▪ Public agencies with 1 or more employees

• POTENTIAL EXCLUSIONS – SECRETARY OF LABOR MAY EXEMPT
  ▪ Certain health care providers & emergency responders
  ▪ Businesses w/ less than 50 employees when the imposition of such requirements would jeopardize the viability of the business as a going concern.

My Chief People Officer
Emergency Paid Sick Leave

• **Eligible Employees**
  - All employees (full & part time)
  - No waiting period

• **Amount of Leave**
  - Full-time employees receive 80 hours
  - Part-time time: equivalent to average hours in 2-week period
  - Variable employees: average hours per day in 6 months prior to using the leave (or if < 6 mos: reasonable expectation of hours at time of hire)

• **No carryover or payout**
Emergency Paid Sick Leave

• Qualifying Reasons
  1. Subject to a federal, state, or local quarantine/isolation order related to COVID-19;
  2. Advised by a health care provider to self-quarantine because of COVID-19 and seeking a diagnosis;
  3. Experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
  4. Caring for an individual subject or advised to quarantine or isolation;
  5. Caring for a son/daughter whose school or place of care is closed due to COVID-19; or
  6. Experiencing other substantially similar conditions specified by the Secretary of HHS

• Rate of Pay
  ▪ Reasons 1-3: 100% of hourly wage for time used up to $511 per day
  ▪ Reasons 4-6: 2/3 of hourly wage for time used up to $200 per day
  (These wages are not subject to employer’s portion of social security payroll taxes)
  (Reimbursable as a Tax Credit for Private Employers ONLY)
Emergency Paid Sick Leave

• **What rate to use - the greater of:**
  - Regular rate of pay
  - Federal minimum wage
  - Applicable state or local minimum wage
Emergency Paid Sick Leave

**Must be provided in addition to any paid time under:**
- Applicable Law (other specific laws providing paid sick leave)
- A collective bargaining agreements
- Employer’s policy

**Employer Prohibitions**
- Require employees to find their own replacement
- Require use of other paid time off before using this leave
- Discipline, discharge or discriminate for use or complaints
Emergency Paid Sick Leave

• Notice Requirements
  ▪ Model notice provided on Department of Labor website at: https://www.dol.gov/agencies/whd/pandemic
Traditional FMLA

• **Covered Employer**
  - Private employer with 50+ employees within 75 mile radius
  - All public agencies, including state, local and federal employers and schools

• **Eligible Employee**
  - 12 months of service (does not need to be consecutive)
  - 1,250 hours in preceding 12 months
  - Works at a location where at least 50 employees are employed within 75 mile radius

• **Qualifying Events**
  - Birth/Adoption/Foster Care
  - Own, Spouse’s, Child’s, Parents Serious Health Condition
  - Military: Qualifying Exigency/Caregiver for “next of kin”

• **Timeframes:** 12 workweeks unpaid leave in 12-months
  (except Military Caregiver Leave = 26 weeks)
Traditional FMLA

• **COVID-19 QUALIFIES IF:**
  - **Overnight stay in hospital; or**
  - **Incapacity over 3 calendar days AND doctors visit AND continuing treatment**
  - **Complications to underlying health condition**

• **Multiple uses by the same employee**
  - **Own serious health condition**
  - **Serious health condition of child, spouse or parent**
Traditional FMLA

• FMLA ALONE IS UNPAID

• RUNS CONCURRENTLY WITH OTHER PAID LEAVES AVAILABLE:
  ▪ Emergency paid Sick Leave/PTO/Vacation/Sick/
  ▪ STD (if meets waiting period and qualifications)
  ▪ Work compensation (if work related injury)
  
  • Note: we believe it will be extremely difficult for an employee (who isn’t a healthcare worker or emergency responder) to prove they were exposed to COVID-19 during scope of employment
Emergency FMLA Expansion

**Covered Employers**
- Private employers with less than 500 employees
- Public agencies

**Eligible Employees**
- Employed for at least 30 days

**Permitted Exclusions**
- Employers with Health Care Worker or First Responders may exclude their employees

**Possible Exclusions — Secretary of Labor may exempt**
- Certain health care workers & emergency responders
- Businesses w/ less than 50 employees when the imposition of such requirements would jeopardize the viability of the business as a going concern.
Emergency FMLA Expansion

**Qualifying Reason:**

1. **Employee is unable to work (or telework) because they need to care for their child whose school, place of care, or childcare provider is not available because of a COVID-19 public health emergency**
   - Must be the employee’s child under 18
   - Childcare provider who receives compensation for providing service
   - Elementary or secondary school
Emergency FMLA Expansion

• **Amount of Leave**
  • Same availability as traditional FMLA: 12 weeks total

• **Unpaid Leave**
  • First 10 days of covered leave
  • Employees may substitute other paid leave (EPSL/PTO/Sick/Vacation)

• **Paid Leave**
  • Remaining 10 weeks paid at 2/3 regular rate of pay up to $200/day ($10,000 total per employee)
Emergency FMLA Extension

**Restoration Rights**

- **Same or Equivalent Position**

**Exceptions**

- Less than 25 employees;
- Position does not exist because of public health emergency
- Employer attempts to find another position for employee
- Employer makes reasonable efforts for 1 year to return employee if a position becomes available
Emergency FMLA Extension

• **Notice Requirements**
  - Foreseeable notice when practicable

• **Certification**
  - No certification available
Thank you!