On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (FFCRA) to address the impact of the COVID-19 national health emergency. The FFCRA became effective on April 1, 2020 and applies to employers with fewer than 500 employees. However, the USDOL Secretary is authorized to issue regulations excluding employers with fewer than 50 employees from having to comply with the FFCRA if it would jeopardize the viability of their business. Further action by the agency is needed before these potential exceptions become effective, and the USDOL has stated that it intends to issue these regulations sometime in April.

The U.S. Department of Labor (USDOL) recently issued guidance to clarify certain aspects of the FFCRA and its requirements. For more details, you can read the FFCRA Q and A, the guidance on employer obligations, and the guidance on employee rights. The agency also stated it will issue additional guidance in April. Among other provisions, the FFCRA requires employers to provide up to two weeks of paid sick leave for one of six different situations (iterated in the guidance on employer obligations linked above) and up to 12 weeks of family medical leave – 10 of which must be paid – to help those dealing with a need to care for children affected by school or childcare closures (subject to a total cap of $12,000 per employee).

The requirement for sick and family medical leave expires on Dec. 31, 2020. All employees of covered employers are eligible for this leave, no matter when they were hired or whether they are full- or part-time. This leave is a benefit in addition to any others that employees have or could accrue. Employers cannot require employees to use other leave before taking the leave required under the FFCRA, nor can they require employees to find their own replacements before taking the leave. In addition, employers must not take any adverse employment action against someone for using this leave or for filing a complaint, instituting a proceeding or participating in a proceeding under or related to the FFCRA.

**Payments During Leave**
Full-time employees can get up to 80 hours of sick pay. Part-time employees are eligible for up to the number of hours they are normally scheduled to work in a two-
week period. Employees will be paid their regular hourly rate up to $511/day or $5,110 in the aggregate for COVID-19 absences related to reasons one, two, and three above. Employees will receive two-thirds their regular rate of pay, with a max of $200/day or $2,000 in the aggregate, for absences related to reasons four, five, and six above. This sick leave is payable on day one.

Employers must allow employees 10 days (two weeks) of unpaid family medical leave. After these first 10 days of unpaid family medical leave, employers must pay employees at least two-thirds their regular rate of pay for the number of hours the employee normally would be scheduled to work over that time period. If an employee is normally scheduled to work more than 40 hours in a week, employers must pay an employee for those additional hours, although the pay does not need to include a premium for overtime hours. However, in no event is the employer required to pay the employee more than $200 per day, or $10,000 over the entire course of the leave.

Family medical leave applies only when employees cannot work or telework because they have to take care of their children who are home because of a school or day care closure due to COVID-19, or because a “child care provider” (i.e., babysitter or nanny) is unavailable because of COVID-19. While the first 10 days of leave are unpaid, this period of leave may be paid using sick leave, since having one’s children home because of COVID-19 also qualifies the employee for such leave.

So, if an employee is eligible for both family medical leave and paid sick leave, how would these interact with each other? Let’s say an employee must stay home with the kids because their school has closed for a COVID-19-related reason. That employee’s paid sick leave would cover the first 10 days of leave. Then the employee would become entitled to 10 more weeks of paid family medical leave, which would be paid at 2/3 of that individual’s regular rate of pay.

**Enforcement**

The penalties for noncompliance with the FFCRA sick leave requirements mirror the FLSA, while any failure regarding the requirements for family medical leave is subject to the same penalties and enforcement mechanisms as the FMLA. However, the DOL is taking a non-enforcement position for at least the first 15 days the FFCRA is in effect, so long as the employer is trying in good faith to comply.

**Job Restoration**

Employers must restore employees who take family medical leave to an equivalent position upon their return to work. Employers with 25 employees or less must make reasonable efforts to restore the employee to an equivalent position with equivalent pay and benefits, unless the position was eliminated due to: (1) economic conditions; or (2) other changes in operating conditions affecting employment and caused by the coronavirus emergency. If an equivalent position is not available, the employer must make reasonable efforts for one year (after the employee’s leave starts or after the COVID-19 health emergency concludes) to contact the employee regarding any equivalent positions that become available.
Notice Posting
On March 25, the USDOL issued a mandatory notice poster for FFCRA, available here. In accompanying FAQ guidance, available here, the USDOL states that each employer must post the notice “in a conspicuous place on its premises,” though that requirement can be satisfied “by emailing or direct mailing this notice to employees or posting this notice on an employee information internal or external website” such as an intranet.

Paid Leave Tax Credits
The FFCRA also provides a tax credit to employers for wages paid for sick leave covered by the legislation. The amount of the credit is capped at $511 of wages per day paid to each employee to care for themselves and capped at $200 of wages per day paid to each employee to care for a family member or child if their school is closed. Additionally, the credit is generally limited to 10 days of wages per employee. The credit is applied to the employer portion of the 6.2% Social Security Tax and is refundable if it exceeds the amount the employer pays in such payroll tax. The legislation provides a similar tax credit for self-employed individuals against the self-employment tax.

As the Vice President of Government Relations, Jim Patterson is responsible for overseeing and coordinating the day-to-day activities of LABI’s lobbying team at the Capitol. He directs the Taxation and Finance, the Employee Relations, and the Small Business Councils, and is also the Executive Director of the Louisiana Right-to-Work Committee.

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