



March 20, 2020

New Federal Law Requires Many Employers to Provide Paid Coronavirus-Related Leave

On March 18, the Senate passed and President Trump signed into law a coronavirus relief package including requirements for many employers to provide qualifying employees emergency paid leave. These requirements become effective April 1, 2020. Eligibility for the new leave expires on December 31, 2020 and the leave may not be carried over into 2021. Below is a summary of the new leave requirements.

Emergency Paid Sick Leave

Effective April 1, 2020, employers with fewer than 500 employees are required to grant emergency paid sick leave (Emergency Paid Sick Leave) to employees, regardless of their duration of employment, if they are unable to work (or telework) because they:

- Are subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- Have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- Are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- Are caring for an individual who is subject to a quarantine or isolation order or has been advised by a health care provider to self-quarantine;
- Are caring for their child if the child's school or child care facility has been closed or the child's care provider is unavailable due to COVID-19 precautions; or
- Are experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services (HHS).

Employers may choose to exclude health care providers and emergency responders from eligibility for this leave. In addition, the law authorizes the U.S. Department of Labor (DOL) to issue regulations exempting small businesses with fewer than 50 employees from Emergency Paid Sick Leave requirements relating to school closings or child care unavailability when imposition of those requirements would jeopardize the viability of a business as a going concern.

A covered employer is required to provide each eligible full-time employee with up to 80 hours of Emergency Paid Sick Leave and each eligible part-time employee with up to the number of hours that the employee works, on average, over a 2-week period. Where the employee is subject to a quarantine or isolation order, has been advised by a health care



March 20, 2020

provider to self-quarantine or is experiencing COVID-19 symptoms and is seeking a medical diagnosis, the leave is to be paid at the employee's regular rate of pay, up to \$511 per day and \$5,110 in the aggregate, per employee. Where the employee is taking leave to care for a child or another individual for the reasons described above or is experiencing a similar condition specified by HHS, the leave is to be paid at two-thirds of the employee's regular rate of pay up to \$200 per day and \$2,000 in the aggregate, per employee. (If a part-time employee works an irregular schedule, the rate of pay will be calculated based on the average number of hours the employee was scheduled to work per day for the six-month period prior to taking leave, including hours taken as leave of any type. If an employee has not worked for a six-month period prior to taking the leave, the rate of pay is calculated based on the employee's reasonable expectation at the time of hiring of the average number of hours per day that they would normally be scheduled to work.)

After the first workday (or part of a workday) for which an employee receives Emergency Paid Sick Leave, the employer may require the employee to follow reasonable notice procedures in order to continue receiving the leave. Employers may not require employees to find replacements to cover for them during their Emergency Paid Sick Leave or to use other employer-provided sick benefits before taking that leave. Nor may employers terminate or otherwise retaliate against any employee who takes Emergency Paid Sick Leave. Failure to provide the required leave will trigger penalties under the federal Fair Labor Standards Act.

The new law directs the DOL to develop a model notice regarding Emergency Paid Sick Leave by March 25 and requires employers to post the notice. The law also requires the DOL to issue guidelines by April 1 to assist employers in calculating required payments for Emergency Paid Sick Leave.

Emergency Child Care Leave

The new law amends the Family and Medical Leave Act on a temporary basis to require employers with fewer than 500 employees to provide emergency child care leave (Emergency Child Care Leave) to employees who have been on their payroll for at least 30 days before the leave begins. As with Emergency Paid Sick Leave, the law permits covered employers to exclude health care providers and emergency responders and authorizes the DOL to issue regulations exempting small businesses with fewer than 50 employees when imposition of the leave requirements would jeopardize the viability of a business as a going concern.

Starting April 1, 2020, qualifying employees may take job-protected leave for up to 12 weeks if they are unable to work (or telework) due to a need to care for their child if the child's



March 20, 2020

school or child care facility has been closed or if the child's child care provider is unavailable due to an emergency declared by a federal, state or local government related to COVID-19.

The first 10 days of the leave may be unpaid, and employees have the choice to use any accrued paid time off, including vacation and sick leave (and presumably, Emergency Paid Sick Leave), to cover the initial 10 days of leave, but employers may not require them to do so. After the initial 10-day period, the employee must be paid two-thirds of their regular pay for the number of hours they would normally have been scheduled to work, up to \$200 per day and \$10,000 in total per employee. (If an employee works an irregular schedule, the rate of pay is calculated based on the average number of hours the employee was scheduled to work per day for the six-month period prior to taking leave, including hours taken as leave of any type. If an employee has not worked for a six-month period prior to taking the leave, their rate of pay is calculated based on the employee's reasonable expectation at the time of hiring of the average number of hours per day that they would normally be scheduled to work.) Where the need for Emergency Child Care Leave is foreseeable, an employee must provide the employer with such notice of leave as is practicable.

Employers with 25 or more employees are required to restore an employee who takes Emergency Child Care Leave to the same or equivalent position the employee held before their leave. Employers with fewer than 25 employees are not required to do so if the position no longer exists after the leave due to economic conditions or other changes in the employer's operations caused by the public health emergency during the leave period. To qualify for this exclusion, the employer must make reasonable efforts to restore the employee to an equivalent position following the leave and, if those efforts fail, the employer must make reasonable efforts to contact the employee if an equivalent position becomes available within up to a year following the employee's leave.

The new law gives the DOL the authority to issue regulations implementing the new leave requirements, including rules to ensure consistency between the law's Emergency Paid Sick Leave and Emergency Child Care Leave provisions.

Tax Credits for the New Coronavirus-Related Leave

The new law establishes tax credits against the employer's share of Social Security taxes for employers who provide required Emergency Paid Sick Leave and Emergency Child Care Leave. If an employer's costs of providing the required leave exceed the taxes it would owe, the federal government will refund the employer the excess amount.

An employer may claim a refundable tax credit for 100% of the qualified Emergency Paid Sick Leave wages it pays each quarter, up to a maximum of \$511 per day (\$200 per day if the



March 20, 2020

leave is to care for someone else or is for a condition specified by HHS) and subject to a 10-day limit per employee per quarter. An employer that pays Emergency Child Care Leave is entitled to a refundable tax credit for 100% of the qualified Emergency Child Care Leave wages it pays each quarter, up to a maximum of \$200 per day and \$10,000 total per employee per quarter. Employers are also permitted additional tax credits for qualified group health plan costs attributable to, and Medicare payroll taxes on, qualified Emergency Paid Sick and Child Care Leave wages paid each quarter.

Self-employed individuals are also eligible for refundable tax credits for these new types of leave.

Contact Us

For further information, please contact your Hemenway & Barnes advisor or the authors of this alert:

John J. Siciliano
617.557.9729
jsiciliano@hembar.com

Eleanor A. Evans
617.557.9771
eevans@hembar.com

Matthew J. Carey
617.557.9740
mcarey@hembar.com

Business Law Group

Vanessa A. Arslanian
Teresa A. Belmonte
Meaghan E. Borys
Matthew J. Carey
Mark B. Elefante

Kevin M. Ellis
Eleanor A. Evans
Stephen W. Kidder
Steven L. Mangold
Nathan N. McConarty

Ryan P. McManus
M. Patrick Moore
Johanna W. Schneider
John J. Siciliano

www.hembar.com | Copyright © 2020 Hemenway & Barnes LLP

This advisory is provided solely for information purposes and should not be construed as legal advice with respect to any particular situation. This advisory is not intended to create a lawyer client relationship. You should consult your legal counsel regarding your situation and any specific legal questions you may have.