



ELDI ALERT –CORONAVIRUS RESPONSE ACT PASSED

Last night, Congress passed and the President of the United States signed into law the “Families First Coronavirus Response Act” (the “Act”), the anticipated coronavirus relief bill. The Act has several main components:

- paid sick leave for affected workers;
- paid family leave for affected workers;
- increased unemployment compensation funding to states which loosen their eligibility rules for unemployment compensation benefits;
- free testing for those needing testing for the COVID-19 virus;
- expanded food aid; and
- tax credits to employers who provide qualified sick leave and family leave under the Act.

The Act requires the Department of Labor to issue regulations within 15 days, and those regulations will add more detail to the Act’s requirements but for now, below is a summary of the major components of the Act as it relates to employers:

PAID FAMILY LEAVE

A portion of the Act is called the “Emergency FMLA Expansion Act” (“**Emergency FMLA**”). The essential components of the Emergency FMLA are:

- Covers employers with less than 500 employees
 - Employers with less than 50 employees who can demonstrate that their business would “not be viable” if the employer had to comply are exempt (detail expected in regulations; none available now)
- Covers employees who have been employed for 30 days or more
- Leave entitlement ends 12/31/20
- Permits leave due to a “Qualified Need related to a public health emergency” which defined as an employee who cannot work OR telework because the employee needs leave to care for a minor child if school is closed or a child care



provider is unavailable because of an emergency related to the COVID-19 outbreak

- Paid leave entitlement:
 - First 10 days of leave are UNPAID unless the employee uses other paid time off available to the employee
 - Paid leave available thereafter at 2/3 of the employee's regular rate of pay
 - Number of hours to be paid is based upon the number of hours the employee is scheduled to work
 - Amount of pay is capped at \$200.00 per day and \$10,000.00 total
- Duration of leave – up to 12 weeks
- Job restoration – restore employee to the employee's position or an equivalent position at the end of leave
- Effective in 15 days

UNEMPLOYMENT INSURANCE

A portion of the Act is entitled the Emergency Unemployment Insurance Stabilization and Access Act of 2020. The essential components are:

- The Federal government is providing emergency grants to state unemployment accounts in the Unemployment Trust Fund
- States are eligible for the grants if the state:
 - experiences an increase of 10% or more in unemployment claims over the same calendar quarter of last year; and
 - the state eases eligibility requirements and access to unemployment compensation benefits, including by waiving the waiting week requirement and the work search requirement; and
 - the state does not charge employers who are directly impacted by the coronavirus in the workplace OR directed by public health officials to isolate or quarantine workers.



- Applies if unemployment begins after enactment of Act and before 12/31/20

PAID SICK LEAVE

A portion of the Act is entitled the “Emergency Paid Sick Leave Act” (the “**Sick Leave Act**”). The essential components are:

- Employers must provide paid sick leave to the extent that an employee is unable to work OR telework due to a need for leave because of any of the following 6 reasons:
 1. The employee is subject to federal, state, or local quarantine or isolation orders related to COVID-19
 2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19
 3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis
 4. The employee is caring for an individual subject to quarantine under reason (1) above or advised to quarantine under reason (2) above
 5. The employee is caring for a child if school is closed or a child care provider is unavailable for reasons related to COVID-19
 6. The employee is experiencing any other “substantially similar condition” specified by the Secretary of Health and Human Services
 - Regulations to come in the next several weeks
 - Health care providers and emergency responders are exempt from leave entitlement
- Amount of leave:
 1. Full time employees: 80 hours
 2. Part time employees: Average number of hours worked over a 2 week period
- Carry over of time not permitted



- Entitlement to use leave – all employees entitled to use paid sick leave under the Paid Sick Leave Act, regardless of how long they have been employed
 1. Employers CANNOT require employees to use other available forms of paid time off before the employee can use sick leave under Paid Sick Leave Act
 2. Employers can require employees to provide reasonable notice/information demonstrating that the employee needs to continue to use paid sick leave
- Covered employers – employers with 500 or less employees
- Rate of pay under Paid Sick Leave Act – depends upon the reason for leave:
 1. Employees taking leave under reasons 1-3 above (i.e. employee is sick or quarantined):
 - Maximum \$511.00 per day and \$15,110.00 total over duration of sick time
 2. Employees taking leave under reasons 4-6 above (i.e. employee is caring for an ill family member, child out of school, or similar reason):
 - Maximum \$200.00 per day and \$2,000.00 total over duration of sick time
 3. Calculating the rate of pay –
 - Basic rate is the employee's regular rate of pay
 - If employee takes leave for reasons 4-6 above (i.e. employee is caring for an ill family member, child out of school, or similar reason), leave is paid at 2/3 of regular rate of pay
 - If the employee is part time and the employee's hours vary, leave is calculated based upon the average hours worked for the last 6 months. If the employee has not been employed that long, leave is calculated based upon the number of hours in a day that the employer anticipated the employee to work
- Miscellaneous Key Provisions:



1. Effective in 15 days, ends 12/31/20
2. Department of Labor will issue a poster within 7 days advising employees of their rights under the Paid Sick Leave Act; employers will need to post
3. Employer cannot retaliate against employees who use paid sick leave or file a complaint related to the Paid Sick Leave Act
4. Employers who do not comply are deemed to have failed to pay minimum wages and are subject to penalties under the Fair Labor Standards Act
5. If an employee is entitled to greater benefits under an employer paid sick leave/paid time off policy or a collective bargaining agreement, the employee is entitled to those benefits
 - Employers subject to a multi-employer collective bargaining agreement can pay into a multi-employer fund if employees can obtain benefits directly from that fund
6. Regulations to be issued within 15 days by the Secretary of Labor

TAX CREDITS FOR EMPLOYERS

There are two categories of tax credits for employers who need to provide paid leave benefits under the Act:

- Payroll credit for required paid sick leave
 - Employer tax credit for each calendar quarter in an amount equal to 100% of qualified sick leave wages paid by the employer in that quarter
 - Subject to limitations on the rate of pay in the Paid Sick Leave Act (discussed above). If the employer chooses to grant paid sick leave at a greater rate of pay than stated in the Paid Sick Leave Act (i.e. greater than the daily maximum or total cap), the employer will not receive a tax credit for the excess amounts
 - If the employer pays more in benefits than the credit allowed in a quarter, the amount paid is deemed an overpayment of taxes which can be refunded
 - Only applies to sick leave wages under the Paid Sick Leave Act, not other leave



- The tax credit is increased by the employer contribution paid toward maintaining a group health plan
- Payroll credit for required paid family leave
 - Employer tax credit for each calendar quarter in an amount equal to 100% of qualified family leave wages paid by the employer in that quarter
 - Subject to limitations on the rate of pay in the Emergency FMLA (discussed above). If the employer chooses to grant paid family leave at a greater rate of pay than stated in the Emergency FMLA (i.e. greater than the daily maximum or total cap), the employer will not receive a tax credit for the excess amounts
 - If the employer pays more in benefits than the credit allowed in a quarter, the amount paid is deemed an overpayment of taxes which can be refunded
 - Only applies to sick leave wages under the Emergency FMLA, not other leave
 - The tax credit is increased by the employer contribution paid toward maintaining a group health plan

As stated above, regulations should be issued within the next two weeks which should supply some additional details on the above requirements. As always, we will provide updates on major developments. To discuss further the Act or the Act's application to your business, please call ELDI Founder Kimberly L. Russell, Esquire at (610) 941-2541, email Ms. Russell at krussell@kaplaw.com, or send us an email through the www.ELDI.legal contact page.