

Families First Coronavirus Response Act

The “Families First Coronavirus Response Act,” signed into law on March 18, applies to all employers with fewer than 500 employees.

The Act takes effect “not later than 15 days” after signing. In the absence of other action, therefore, the Act will take effect on April 2.

The most significant employment-related provisions of the Act:

Emergency Paid Sick Leave Act

The Act creates a temporary legal right to 80 hours of paid sick time (pro-rated for part-time employees) when an employee is unable to work (or telework) because:

- 1) the employee is subject to a government quarantine or isolation order 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 who is subject to items 1 or 2 above;
- 5) the employee is caring for a child whose school or day care has been closed, or whose child care provider is unavailable, due to COVID-19 precautions (though the DOL has the regulatory authority to exempt businesses with fewer than 50 employees from this requirement); or
- 6) the employee is experiencing any other “substantially similar condition,” as to be specified in upcoming federal regulations.

Sick pay for absences under items 1, 2, or 3 above must be calculated at the employee’s regular rate of pay, but is subject to a cap of \$511 per day and \$5,110 in the aggregate.

Sick pay for absences under items 4, 5, or 6 above is calculated at 2/3 of the employee’s regular rate of pay, and also is subject to a cap of \$200 per day and \$2,000 in the aggregate.

All Arizona employers, of course, already are required to provide certain paid sick time under Proposition 206. Under the new federal law employers may not require that employees use other paid leave (such as but not limited to Prop 206 PST) before using the new federally mandated paid sick time.



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Paid sick time does not carry over from one year to the next. And the Act does not require that employers compensate employees for unused sick pay upon separation from employment.

The Act directs the DOL to “issue guidelines to assist employers” within 15 days (so by April 2).

As noted, the Act is temporary; this paid sick time obligation expires on December 31, 2020.

Emergency FMLA Leave Expansion Act

The Act creates a new category of absence that qualifies for FMLA leave:

“The employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”

The Act also expands the scope of employees who are eligible for this new public health emergency leave provision. The new provision applies to all individuals who have been employed for at least 30 calendar days.

Under the Act the first 10 days of any public health emergency leave may be unpaid (though the employee may elect to use whatever paid time off he or she may have available under the employer’s existing policies—such as Prop 206 PST—and subject to the provisions of the Emergency Paid Sick Leave Act, above). But a public health emergency leave that extends for longer than 10 days must be paid. The leave must be paid at not less than 2/3 of the employee’s regular rate, subject to a cap of \$200 per day and \$10,000 in the aggregate.

The Act gives the DOL the regulatory authority to exempt businesses with fewer than 50 employees from the new requirements if those requirements “would jeopardize the viability of the business as a going concern.”

The Act modifies the normal FMLA employment restoration obligations for employers with fewer than 25 employees, under certain conditions detailed in the bill.

Like the paid sick leave provisions, this expansion of the FMLA is temporary; these provisions expire on December 31, 2020.

Tax Credits

The Act permits employers to take a tax credit for a prescribed portion of the compensation that they pay out as paid sick time or paid family leave. The credit also is refundable under certain circumstances. The Act charges the Treasury Department with issuing regulations to administer the tax credit provisions; no doubt such regulations and other guidance will be disseminated in the weeks to come.

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We will continue to monitor developments in this area (including regulations from the DOL, due no later than April 2). In the meantime, we encourage employers who have specific questions about the Coronavirus (or any employment law topics) to contact Don Johnsen at (602) 530?8437 or dpj@gknet.com.