



FAMILIES FIRST CORONAVIRUS RESPONSE ACT: WHAT EMPLOYERS NEED TO KNOW

On Wednesday night, following a 363-40 vote in the House and a 90-8 vote in the Senate, President Trump signed a multi-billion dollar emergency economic relief bill – H.R. 6201, the Families First Coronavirus Response Act (the “Act”) – into law to help combat the COVID-19 pandemic which ensures free testing, provides paid sick leave, enhances unemployment insurance, increases spending on health insurance for the poor and adds over \$1 billion in food aid.

Most significantly for employers, the Act provides for paid sick days as well as up to three (3) months of paid emergency leave throughout the course of the COVID-19 crisis. While the Act only applies to organizations with less than 500 employees, Congress has indicated that they are working on another relief package and expect to have an additional relief bill on the President’s desk in short term.

Employers subject to the Act are now required to provide full-time employees with two (2) weeks (80 hours) of paid sick leave: (1) to self-isolate because of a diagnosis of COVID-19, or to comply with a recommendation or order to quarantine due to exposure or exhibition of symptoms; (2) to obtain a medical diagnosis or care if the employee is experiencing symptoms of COVID-19; (3) to care for a family member who is self-isolating due to a diagnosis of COVID-19, experiencing symptoms of COVID-19, or quarantining due to exposure or exhibition of symptoms; or (4) to care for a child whose school has closed, or the childcare provider is unavailable due to the COVID-19 outbreak.

Paid sick leave must be compensated at the employee’s regular rate of pay, unless the leave is being used to care for a family member or child, in which case the employee is entitled to only two-thirds of their regular rate of pay. Additionally, paid sick leave, unlike emergency leave as discussed below, is available for immediate use by employees, regardless of the length of employment.

Part-time employees, in contrast to full-time employees, are entitled to the same protections outlined above, but the paid sick time is limited to the number hours that they work, on average, over a two-week period.

Most importantly, employers cannot require employees to utilize other paid leave before providing the paid leave under the Act, and the Act does not provide for a “credit” for any paid leave that has been provided before the enactment – stated differently, employers must provide paid sick leave under the Act in addition to any paid leave already provided.

Further, employees are now entitled to take up to twelve (12) weeks of leave under the Family and Medical Leave Act (“FMLA”). The first two (2) weeks may be unpaid, however the employee has the right to choose to substitute accrued paid time off (“PTO”) or other medical or sick leave during the two-week unpaid period. An employer cannot require the employee to use any accrued PTO or other medical or sick leave

during the paid period. After the initial two-week period, the employer must continue paid FMLA leave at a rate of no less than two-thirds of the employee's usual rate of pay.

To be eligible, the employee must have been on the employer's payroll for thirty (30) days. An employee can use this new emergency FMLA leave: (1) to adhere to a requirement or recommendation of quarantine due to exposure or symptoms of COVID-19; (2) to care for a family member who is adhering to a requirement or recommendation to quarantine due to exposure to or symptoms of COVID-19; or (3) to care for a child of an employee if the child's school or place of care has been closed, or the childcare provider is unavailable, due to the COVID-19 outbreak.

As with all other leave under the FMLA, the emergency leave is job-protected, and an employer must return the employee to the same or equivalent position upon their return to work. As is noted above, emergency FMLA protection does not apply to organizations with more than 500 employees, it also does not apply to employers with less than 25 employees if the employee's job no longer exists due to the COVID-19 outbreak. If this exception applies, employers are required to make reasonable efforts to restore the employee to an equivalent position over a one-year period. The Secretary of Labor also has the discretion to exempt employers with fifty (50) or fewer employees from compliance with the Act upon a showing that compliance would cause financial hardship.

To help offset the costs for employers, employers may be reimbursed for some of the costs through tax credit equivalents of up to one hundred percent of the qualified paid sick leave or emergency leave wages paid under this Act. The Act will go into effect in fifteen (15) days, or by April 3, 2020, and the paid sick leave and emergency leave provisions of the Act are set to expire on December 31, 2020.

Employers should expect additional relief measures to be enacted within the coming days as the country continues to navigate through the COVID-19 crisis. Our COVID-19 Task Force is available to assist you with any questions you may have as you navigate through our new and existing employment laws.

Authors:

Mercedes Colwin, Partner – Gordon Rees Scully Mansukhani Gordon
Misty D. Marris, Partner – Gordon Rees Scully Mansukhani Gordon
Debra Ellwood Meppen, Partner – Gordon Rees Scully Mansukhani Gordon
John T. Mills, Associate – Gordon Rees Scully Mansukhani Gordon

Gordon Rees Scully Mansukhani - Your 50 State Partner™

As the only law firm with offices and attorneys in all 50 states, Gordon & Rees delivers maximum value to our clients by combining the resources of a full-service national firm with the local knowledge of a regional firm. Featuring more than 950 lawyers nationwide, we provide comprehensive litigation and business transactions services to public and private companies ranging from start-ups to Fortune 500 corporations. Founded in 1974, Gordon & Rees is recognized among the fastest growing and largest law firms in the country. The firm is currently ranked among the 35 largest law firms in the U.S. and the top 50 firms for diverse and female attorneys in the AmLaw 200.