

## MDM&C Update

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March 20, 2020

### ***NEW PAID SICK AND FAMILY AND MEDICAL LEAVE***

Congress enacted and the President signed the “Families First Coronavirus Response Act into law. The Act will take effect on April 2, 2020. Among the provisions of the Act are two sections affecting employers: (1) the Emergency Paid Sick Leave Act; And (2) the Emergency Family and Medical Leave Expansion Act. As the names indicate, employers are required to grant paid sick leave and the FMLA has been expanded to address the conditions caused by the virus.

#### **EMERGENCY PAID SICK LEAVE ACT**

##### **Conditions:**

An employer is required to provide paid sick leave to an employee who is unable to work or telework because the employee:

1. is subject to a quarantine or isolation order;
2. has been advised by a healthcare professional to self-quarantine;
3. is experiencing symptoms and is seeking a diagnosis;
4. is caring for an individual who is subject to quarantine;
5. is caring for the employee’s child because of a school or daycare closing or the childcare provider is unavailable due to the virus; or
6. is experiencing “any other substantially similar condition” to the virus as specified by the Secretary of Health and Human Services.

H.R. 6201§5102(a).

##### **Amount of “Sick Pay”**

A full-time employee is entitled to be paid for 80 hours (two weeks) and part-time employees are entitled to an amount equal to the number of hours they normally work in a two week period.

*An employer is prohibited from requiring an employee to use “other paid leave provided by the employer to the employee before the employee uses the paid sick time provided by this Act.”*

The “sick pay” provided by this Act “shall be available for immediate use” upon the effective date of the Act, which is April 2. The sick pay is available to all employees “regardless of how long the employee has been employed by the employer.”

H.R. 6201§5102(b)(d) & (e).

Although a full-time employee is entitled to 80 hours of paid sick time, there is a cap. For sick time used for the reasons described in #'s 1, 2 and 3 above, the cap is \$511 per day with a maximum of \$5,110. For sick time used for the reasons described in #'s 4, 5 and 6, the cap is \$200 per day with a maximum of \$2,000.

H.R. 6201§5110(5)(ii)(I) & (II).

### **Prohibited Acts**

An employer may not take an adverse employment action against an employee because the employee applied for or received paid sick time.

A violation of the Act subjects the employer and *the individual who made the decision* to penalties equal to double the amount of damages sustained by the employee, attorney fees and fines up to \$10,000 for each violation.

### **Definition of Employee and Employer**

The definition of an employee is broad as the Act incorporates the definition of the Fair Labor Standards Act. An employee is “any individual employed by an employer.” However, a “covered employer” that is an employer defined by the Act is “any person engaged in commerce or in any industry or activity affecting commerce” that employs fewer than 500 employees.

The definition of employer includes “any person acting directly or indirectly in the interest of an employer in relation to an employee.”

### **EMERGENCY FAMILY AND MEDICAL LEAVE EXTENSION ACT**

An employer, of less than 500 employees, is required to provide **paid** family and medical leave to an employee who has been employed for at least 30 days.

H.R. 6201§3102

The employee may take the paid FMLA leave for a “serious medical condition” as well as “a qualifying need related to a public health emergency,” which includes the employee being unable to work or telework because of the need to care for the employee’s child as a result of a school or nursery school closing or the absence of child care.

The first ten (10) days of leave is unpaid. However, the employee may elect to use any accrued vacation, sick or personal time for the unpaid leave.

After the first ten days, the employee shall be paid “an amount that is not less than two-thirds of an employee’s regular rate of pay.” However, “in no event shall such paid leave exceed \$200 per day and \$10,000 in the aggregate.”

If you have any questions about this or any other employment issue, please feel free to contact **Bernard E. Jacques** at [bjacques@mdmc-law.com](mailto:bjacques@mdmc-law.com).

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