Client Alert: Pending Legislation Regarding Emergency Paid Sick Leave

Eckert Seamans Cherin & Mellott, LLC Labor and Employment Group

March 19, 2020

On Wednesday, March 18, 2020, lawmakers in the United States Senate passed the Families First Coronavirus Response Act (“Act”) by a 90-8 vote. The legislation aims to bolster the federal government’s response to the coronavirus outbreak and address the severe impact of the coronavirus on Americans. Various news outlets are reporting that the President signed the bill last night, however, www.congress.gov has not yet been updated to reflect the same. For purposes of this alert, we are examining only the text of the Act as passed by the Senate.

Among several measures set forth in the Families First Coronavirus Response Act, the Emergency Paid Sick Leave division of the Act generally provides emergency paid sick leave to certain employees that will become effective no later than 15 days after the date of enactment and will expire on December 31, 2020.

Who is covered?

In general, a covered employer includes any employer engaged in commerce or in an industry or activity affecting commerce that, in the case of private entities and individuals, employs fewer than 500 employees and, in the case of public agencies or any other employer that is not a private entity or individual, employs 1 or more employees.

What does the Act provide?

Paid sick time is the increment of compensated leave that is provided by an employer for use during an employee’s absence from work for limited uses discussed below. The Act provides that the amount of paid sick time to which a full-time employee is entitled is 80 hours. Part-time employees are entitled to a number of hours equal to the number of hours that such employee works, on average, over a 2-week period. The Act also provides for the calculation of paid sick time for part-time employees with varying schedules from week to week. In all cases, paid sick time shall not carry over from year to year.

The Act permits employees to use sick time immediately, regardless of how long the employee has been employed. However, paid sick time provided under the Act will cease beginning with
the employees next scheduled work shift immediately following the conclusion of the employee’s need for paid sick time.

Employees are required to be compensated for paid sick time in an amount not less than the greater of the employee’s regular rate of pay or the minimum wage rate in effect under applicable federal or state law. If the employee is using the paid sick time to care for a family member ordered to isolate, quarantine, or self-quarantine or a son or daughter whose school or child care closed due to COVID-19 related concerns, that employee’s compensation shall be 2/3 of the amount the employee would otherwise receive if the employee was sick or ordered to stay home.

Paid sick time is capped at $511 per day and $5,110 in the aggregate for use by employees who are sick, seeking medical diagnosis, or have been ordered to isolate, quarantine, or self-quarantine. Paid sick time is capped at $200 per day and $2,000 in the aggregate for employees who use the time to care for family members under certain circumstances.

**How does it work?**

The Act first requires an employee to use the emergency paid sick time before permitting the employee to use any accumulated paid sick time. An employer is prohibited from requiring an employee to use accrued paid sick time or other paid leave prior to the employee’s use of additional paid sick time. An employer is also prohibited from requiring an employee to find a replacement to cover the hours during which the employee is using paid sick time.

**How can employees use paid sick leave?**

To the extent that an employee is unable to work or telework, the employee may use paid sick time for any of the following reasons:

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- The employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order or has been advised by a healthcare provider to self-quarantine.
- The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
• The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

The Act permits an employer of an employee who is a health care provider or an emergency responder to exclude such employee from application of the uses of paid sick leave.

**Can I get reimbursement?**

The Act permits private employers to take tax credits for all or a portion of qualified sick leave wages paid to employees, subject to certain limitations, based on the type of employer. This credit shall not apply to public employers.

**Other employer considerations.**

The Act further provides, among other things, a notice requirement to all employees, nondiscrimination obligations for employers, and penalties for employers who fail to provide paid sick leave under the Act or unlawfully terminate an employee for taking such paid sick leave.

The Act proceeded to the President of the United States for approval. Various news outlets are reporting that the President signed the bill last night. www.Congress.gov is not yet reporting this, however, there has been a recent lag in website updates. Regardless, covered employers should prepare to provide the emergency paid sick leave in accordance with the Act.