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Department of Labor Issues Temporary Regulations on Families First Coronavirus Response Act

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On April 1, the U.S. Department of Labor issued Temporary Regulations (also referred to as a "Temporary Rule") to "carry out the purposes" of the Families First Coronavirus Response Act (the "Act"). You can find the Temporary Rule here.

As explained in our earlier advisories, the Act requires employers with fewer than 500 employees to provide two different types of paid leave to employees that are impacted by the current COVID-19 pandemic.

The Temporary Regulations provide substantial guidance, including but not limited to the following:

- One basic condition applies to all employees who seek to take their paid sick leave or expanded family and medical leave intermittently—they and their employer must agree. Absent agreement, no leave under the Act may be taken intermittently.
- Nothing in this Act should be construed as impacting an employee's exempt status under the Fair Labor Standards Act (the "FLSA"). For example, an employee's use of intermittent leave combined with either paid sick leave or expanded family and medical leave should not be construed as undermining the employee's salary basis for purposes of the FLSA's "white collar" exemptions.
- An employee is entitled to paid leave under the Act only if the employer has work for the employee to perform. The DOL noted the following example:
  - If a coffee shop closes temporarily or indefinitely due to a downturn in business related to COVID-19, it would no longer have any work for its employees. A cashier previously employed at the coffee shop who is



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subject to a stay-at-home order would not be able to work even if he were not required to stay at home. As such, he may not take paid sick leave because his inability to work is not due to his need to comply with the stay-at-home order, but rather due to the closure of his place of employment. That said, he may be eligible for state unemployment insurance.

- An employee must provide his or her employer documentation in support of paid sick leave or expanded family and medical leave. Such documentation must include a signed statement containing the following information: (1) the employee's name; (2) the date(s) for which leave is requested; (3) the COVID-19 qualifying reason for leave; and (4) a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason. In addition to the above information, employees must provide certain certifications specific to the reason they are requesting leave:
  - If an employee requests paid sick leave due to government quarantine or isolation order, the employee must provide the name of the government entity that issued the order.
  - If an employee requests paid sick leave because a health care provider advised the employee to self-quarantine, the employee must provide the name of the health care provider.
  - If an employee requests paid sick leave to care for someone else under quarantine, the employee must provide either (1) the government entity that issued the quarantine or isolation order to which the individual is subject, or (2) the name of the health care provider who advised the individual to self-quarantine, whichever is applicable.
  - Finally, if an employee requests paid sick leave or expanded family and medical leave to care for their child, the employee must provide (1) the name of the child being care for, (2) the name of the school, place of care, or child care provider that closed or became unavailable due to COVID-19, and (3) a statement representing that no other suitable person is available to care for the child during the period of requested leave.

An employer may not require documentation beyond what is provided for in the regulations. Therefore, an employee does not need to provide a doctor's note advising self-quarantine or official documentation that their child's school or daycare center is closed.

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