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Employers and Employees Take Note: Congress Passes Coronavirus Response Legislation

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On March 14, 2020, the U.S. House of Representatives passed the Families First Coronavirus Response Act (the "Act"), H.R. 6201. On March 18, 2020, the Act was passed by the Senate and signed into law by the President. This memorandum summarizes the key provisions of the Act relevant to employers and employees.

I. Emergency Paid and Unpaid Leave

The Act requires government agencies and private employers of fewer than 500 employees to provide paid sick leave for employees who are unable to work for the following reasons: (i) self-isolation due to a coronavirus diagnosis; (ii) seeking diagnosis or treatment for coronavirus symptoms; (iii) complying with a recommendation or order of a public official or health care provider to isolate due to coronavirus exposure or symptoms; (iv) to care for a family member in connection with the family member's coronavirus diagnosis, treatment, or recommended isolation; or (v) to care for a child whose school or place of care has been closed, or the childcare provider is unavailable, due to coronavirus. Full-time employees are entitled to up to 80 hours of paid sick leave, while part-time employees are entitled to their typical number of hours worked in a two-week period. Sick leave taken based on the circumstances in items (i), (ii) and (iii) above shall be paid at the employee's regular rate of pay, while leave taken based on items (iv) and (v) above shall be two-thirds of the employee's regular rate. The sick leave provided under the Act is in addition to any other paid leave already provided by the employer. Emergency paid sick leave is capped at $511 per day and $5,110 in the aggregate for an employee who is diagnosed, seeking diagnosis or treatment, or complying with an isolation order, and at $200 per day and $2,000 in the aggregate for an employee caring for a family member or child.

The Act also expands the Family and Medical Leave Act of 1993 (the "FMLA," which ordinarily provides for up to 12 workweeks of unpaid, job-protected leave) to provide leave to an employee who is unable to work due to a need to care for the employee's child whose school or place of care has been closed, or the childcare provider is unavailable, due to a coronavirus-related public health emergency. The first 10 days of the employee's

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emergency FMLA leave may be unpaid. Afterward, the employer must provide paid leave for the balance of the 12-week FMLA leave period. The employee's compensation must be in the amount representing two-thirds of the employee's usual pay. The employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for any part of this emergency FMLA leave (including substituting paid leave for the unpaid portion of the FMLA leave). To be eligible for this emergency FMLA leave, the worker must have been employed by the employer for at least 30 days. The Act gives the Secretary of Labor the authority to exempt small businesses with fewer than 50 employees from the FMLA expansion where it would jeopardize the viability of the business. Emergency paid FMLA leave is capped at $200 per day or $10,000 in the aggregate.

Like the emergency paid sick leave provision, the FMLA expansion also applies only to government agencies and employers with fewer than 500 employees. The rationale may be that many larger companies already offer some form of paid sick leave—89 percent, according to the US Bureau of Labor Statistics.

Both provisions go into effect 15 days from the enactment of the Act and expire December 31, 2020. Employers will be required to post a notice, to be prepared by the Department of Labor, describing employees' rights under the Act.

II. Tax Credits for Paid Sick Leave and FMLA Benefits

The Act provides employers with a refundable tax credit for amounts paid to employees as emergency sick leave or paid FMLA leave. The credit is allowed against the employer portion of the Social Security tax (Internal Revenue Code § 3111(a)), subject to certain caps. If the credit exceeds the employer's total liability for Social Security tax for all employees, the excess credit is refundable to the employer. Also, employers need not deduct the Social Security tax from payments to employees for emergency sick leave or paid FMLA leave.

Similar credits are available against income taxes for self-employed individuals who must self-isolate, obtain a diagnosis, comply with a self-isolation recommendation or care for family members and children in connection with coronavirus.

III. Unemployment Insurance Benefits

The bill provides emergency unemployment insurance ("UI") relief to the states, to the extent that a state temporarily relaxes certain UI eligibility requirements such as waiting periods and work search requirements, and experiences at least a 10% increase in unemployment.

IV. Conclusion

We will continue to monitor such legislative and other developments related to the coronavirus as may be relevant to our clients.

Disclaimer: This summary is provided for educational and information purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys

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