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## CHANGES IN FEDERAL AND STATE EMPLOYMENT LAWS AS A RESULT OF COVID-19

The “Emergency Family and Medical Leave Expansion Act” signed by President Trump on Wednesday, March 18, 2020 makes several amendments to the federal Family Medical Leave Act (“FMLA”). President Trump also signed the “Emergency Paid Sick Leave Act.” Both acts apply to businesses with fewer than 500 employees. The acts take effect on April 2, 2020 and remain in effect until December 31, 2020. Here is what you need to know to be ready:

### Emergency Expansion of the Family Medical Leave Act (FMLA)

- **Expanded Coverage and Eligibility** – The Act covers government employers and private employers with fewer than 500 employees. Employee eligibility is lowered to cover any employee who has worked for the employer for at least 30 days. The Act allows the Secretary of Labor to exempt small businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business. The Act does not expand upon what it means to jeopardize the viability of the business. We await additional guidance from the Department of Labor.
- **Reasons for Emergency Leave** – The Act provides 12 weeks of job-protected leave to allow an employee who is unable to work or telework due to a need for leave to care for the employee’s child (under 18 years of age) if the child’s school or place of care is closed or the childcare provider is unavailable due to a public health emergency (i.e., an emergency with respect to COVID-19 declared by a federal, state or local authority). Employers of health care providers and emergency responders may elect exclusion of those employees to this type of leave.
- **Paid Leave** – The first 10 days may be unpaid. The employee may elect to substitute any accrued paid leave (like vacation or sick leave) to cover some or all of the 10-day unpaid period. After the 10-day period, the employer generally must pay full-time employees at two-thirds the employee’s regular rate for the number of hours the employee would otherwise be normally scheduled. This pay entitlement is capped at \$200 per day and \$10,000 in the aggregate per employee.
- **Calculating Pay for Non-Full Time Employees** – Part-time or irregularly scheduled employees are to be paid based on the average number of hours the employee worked for the six months prior to taking Emergency FMLA. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee was reasonably expected to work at the time of hire.
- **Job Restoration** – Employers with 25 or more employees are to return any employee who has taken Emergency FMLA to the same or equivalent position upon the return to work. Employers with fewer than 25 employees are generally excluded from this requirement if the employee’s position no longer exists following the Emergency FMLA leave due to an economic downturn or other circumstances caused by a public health emergency during the period of Emergency FMLA. This exclusion is subject to the employer making reasonable attempts to return the employee to an equivalent position and requires an employer to make efforts to return the employee to work for up to a year following the employee’s leave.

## Emergency Paid Sick Leave Act

### • Reasons for Paid Sick Leave

Paid sick leave may be taken because the employee is:

1. Subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. Advised by a health care provider to self-quarantine due to COVID-19 concerns;
3. Experiencing COVID-19 symptoms and seeking a medical diagnosis;
4. Caring for an individual (which is not limited to family members) subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
5. Caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
6. 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.

### • Eligibility

Private employers with fewer than 500 employees and government employers are required to provide full-time employees (regardless of the employee's duration of employment prior to leave) with 80 hours of paid sick leave at the employee's regular rate (or two-thirds the employee's regular rate to care for qualifying reasons 4, 5, or 6 listed above).

### • Cap on Paid Sick Leave Wages

Paid sick leave wages are limited to \$511 per day up to \$5,110 total per employee for their own use and limited to \$200 per day up to \$2,000 total to care for others and any other substantially similar condition.

### • Carryover and Interaction with Other Paid Leave

Paid sick leave will not carry over to the following year and may be in addition to any paid sick leave currently provided by employers.

### • Calculating Rate of Pay for Non-Full Time Employees

Part-time or irregularly scheduled employees are to be paid based on the average number of hours the employee worked for the six months prior to taking paid sick leave. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work over a two-week period.

Under both new laws, we expect to see a guidance or regulations from the Department of Labor that will provide additional information.

## On the State Level

Key changes to Massachusetts Unemployment Compensation eligibility.

- One (1) week waiting period has been waived for persons who become unemployed because of lay-offs or business shutdowns taken in response to the virus, because of quarantine orders or directives or illness that prevents them from leaving their homes, or because they must care for a sick or quarantined family member.
- The Division of Unemployment Assistance ("DUA") may pay unemployment benefits if a worker is quarantined due to an order by civil authority or medical professional, or leaves employment due to reasonable risk of exposure or infection or to care for family member.
- For employees (full and part time) impacted by temporary shutdowns, there is no need to seek alternative work, so long as the employee remains in contact with their employer and is available for any work their employer may have.
- Massachusetts DUA has released a PowerPoint presentation titled "COVID-19 Unemployment Handbook" showing in screen-by-screen detail how to complete an application for unemployment compensation. The handbook is available here: <https://www.mass.gov/resource/information-on-unemployment-and-coronavirus-covid-19>

A final reminder: If you are laying off an employee, you must pay that employee his/her wages through the last day of employment (the lay-off date) along with any accrued, unused vacation.

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