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## *PH COVID-19 Client Alert Series: FFA: Potential Amendments to Paid Sick Leave and FMLA Provisions Under Consideration*

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Negotiations continue in Washington over S.3548, or the “Coronavirus Aid, Relief, and Economic Security Act” (“CARES Act”), proposing a \$1.6 trillion emergency rescue package in response to COVID-19. Within the draft CARES Act, there are a number of proposed changes to the Families First Coronavirus Response Act (“FFA”), which was passed on March 18, 2020 and signed into law by the President. We summarize these proposed changes below.

### **I. Re-hired Employees Could Be Eligible for FMLA Leave Under the FFA**

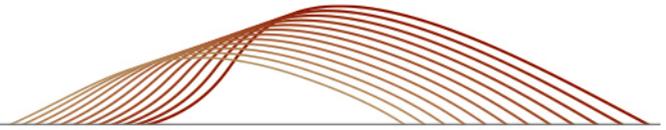
Under the original language of the FFA, in order to be eligible for FMLA leave under the FFA (to care for a child whose school/daycare is closed due to COVID-19), the employee must have been employed for at least 30 calendar days by the employer. Now, in an attempt to address pending mass layoffs and potential re-hiring in the future, the proposed amendment would include, within the definition of covered employee (under Section 110(a)(1)(A)), those who:

1. Are laid off after March 1, 2020;
2. Worked for the employer for at least 30 of the last 60 calendar days preceding their layoff; and
3. Are rehired by the same employer.

### **II. Employers Could Voluntarily Exceed the Caps on Compensation for Paid Sick Leave and FMLA Leave Under the FFA**

The original language of the FFA provides mandatory caps on the amount of compensation an employer can provide to eligible employees for paid sick leave and FMLA leave. See Emergency Paid Sick Leave Act Section 5102 (“... in no event shall such paid sick time exceed”) and Emergency FMLA Act Section 110(b)(2)(B) (“in no event shall such paid leave exceed”).

Under the proposed amendments, the language of these provisions would instead state that “an employer *shall not be required to pay more than* . . .” a fixed amount. Thus, the revised language will



provide a floor, rather than a ceiling, for employers to offer paid leave for COVID-19-related reasons. However, the amounts in the new revision remain unchanged.

### III. Employers' Paid Leave Obligations Would Expire After 80 Hours of Pay or Return to Work

The original FFA language does not address expiration of paid sick leave benefits under the Act. Here, the proposed amendments add an expiration clause to Section 5102 of the Emergency Paid Sick Leave Act, making clear that an employer's requirement to provide paid leave to an employee would expire when (i) the employer has paid the employee for the equivalent of 80 hours of work or (ii) when the employee returns to work, whichever is sooner.

### IV. Certain Government Employees Would Be Exempt from the FFA

Last, the proposed amendments would grant the Director of the OMB the authority to exclude, for good cause, "certain" federal executive branch employers and employees from coverage under Section 5110 of the Emergency Paid Sick Leave Act, and of Section 110(a) of the Emergency FMLA Act.

### Conclusion

We will continue to watch this legislation. As of the time of drafting of this alert, members of the Senate are already framing proposed revisions. In the meantime, our Firm's cross-functional teams will continue to monitor and update you on these issues.

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