

March 2020

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PH COVID-19 Client Alert Series: New Legislation on Paid Sick Leave and Employer Tax Credits

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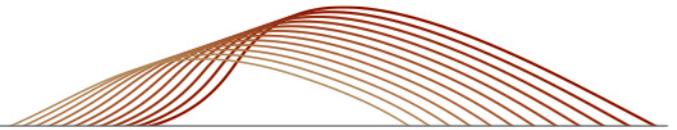
On March 18, President Trump signed into law the Families First Coronavirus Response Act (the "Act"), which includes a public health emergency leave, mandatory emergency paid sick leave, and refundable payroll tax credits for small and medium-sized employers for the public health emergency leave and emergency paid sick leave provided to their employees who are unable to work or telework due to COVID-19.

The Act's public health emergency leave, sick leave mandate and tax credits apply to employers with fewer than 500 employees, although employers may elect to exclude employees who are healthcare providers or emergency responders from the public health emergency leave and the emergency paid sick leave mandates. Employers with fewer than 50 employees can petition the Department of Labor for an exemption from the public health emergency leave and/or paid sick leave mandates.

The Act allows an employee (who has been employed by the employer for at least 30 days) to take a public health emergency leave to care for a child as follows:

- While the Family and Medical Leave Act generally applies to employers with 50 or more employees, the public health emergency leave applies to employers with less than 500 employees.
- An employee, who is unable to work or telework because the employee has to care for his or her child (under 18 years of age), whose school or place of care is closed or unavailable due to a COVID-19 public health emergency, may take up to 12 weeks of job-protected leave.
- The first 10 days of the leave are unpaid, although the employee may elect to substitute any accrued paid leave (e.g., vacation, personal leave, sick leave) during some or all of the 10-day unpaid period. For the subsequent portion of the public health emergency leave, the employer generally must pay the employee at two-thirds the employee's regular rate of pay, for the number of hours that the employee would otherwise be normally scheduled, up to \$200 per day and \$10,000 in the aggregate per employee.

The Act imposes the paid sick leave mandate on covered employers and provides a corresponding tax credit with the following parameters:



- Employees who are (i) subject to a governmental COVID-19 quarantine or isolation order, (ii) self-quarantined due to COVID-19 concerns or (iii) experiencing symptoms of and are seeking a medical diagnosis for COVID-19 are entitled to two weeks of paid sick leave covering 100% of regular wages up to a cap of \$511 per day.
- Employees who are (i) caring for an individual who is subject to a governmental COVID-19 quarantine or isolation order, or is self-quarantined due to COVID-19 concerns, (ii) caring for a child whose school or daycare closed due to COVID-19, or (iii) experiencing any other substantially similar condition to COVID-19, as specified by the Secretary of Health and Human Services, are entitled to two weeks of paid sick leave, covering no less than two-thirds of regular wages up to a cap of \$200 per day.
- Subject to the parameters above, full-time hourly employees are entitled to 80 hours of paid sick leave, while part-time employees are entitled to the number of hours that they normally work in a two-week period.

Some employers have raised concerns about the liquidity needed to comply with the paid sick leave mandate, but the deferral of the federal income tax payment deadline to July 15th for certain taxpayers, per IRS Notice 2020-17, may mitigate some of these liquidity issues.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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