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New Coronavirus Relief Law Impacts Health Plans and Leave Policies

On March 18, President Trump signed the Families First Coronavirus Response Act (the “Act”) into law, which calls for free COVID-19 testing, new paid leave entitlements and tax credits to help employers pay for such leave. This Client Alert summarizes the Act’s important health- and leave-related provisions.

COVID-19 Testing

- Group health plans and health insurance issuers must cover FDA-approved COVID-19 diagnostic testing products without any cost sharing (e.g., deductibles, copayments or coinsurance) or prior authorization requirements.
- This requirement applies to self-funded and fully-insured plans, as well as to grandfathered plans. However, it appears that excepted benefit plans and retiree-only plans are not subject to this provision.
- Cost sharing under Medicare, Medicare Advantage, Medicaid, the Indian Health Services, TRICARE and CHIP is also waived for COVID-19 testing.

These provisions apply immediately and last until the Secretary of Health and Human Services determines that the public health emergency has expired.

Leave Provisions

The Act provides for two types of paid leave—expanded FMLA leave and new emergency paid sick leave. These leave provisions generally apply to private entities employing *fewer than 500 employees*, as well as public agencies and any other entity that is not a private entity that employs one or more employees. We do not yet know whether related employers (such as members of a controlled group) may or must aggregate employees to reach the 500-employee threshold, or if the 500-employee threshold is determined on an entity-by-entity basis without considering whether the entities are related. We anticipate implementing guidance from the Department of Labor and/or the Internal Revenue Service on this issue in the next two weeks.

Other types of employers may also be exempt from these leave provisions:

- Smaller employers (those with fewer than 50 employees), if the new requirements would jeopardize the economic viability of the business,
- Employers of employees who are healthcare providers, and
- Employers of employees who are emergency responders.

Expanded FMLA Entitlements

- The FMLA will temporarily expand to cover a new category of leave related to COVID-19. This new category of leave will apply to employees who are unable to work or telework due to a need to care for a son or daughter under age 18 whose school or place of care has been closed.
- This category of leave will apply to employees who have been employed for 30 calendar days, rather than the standard 12-month period for other types of FMLA leave. Similarly, the 50 employees within a 75-mile radius requirement does not apply.

- The first 10 days of leave may be unpaid (unless an employee elects to use existing paid leave), but the remaining time must be paid at two-thirds the employee's regular rate of pay. Paid leave is capped at \$200 per day and \$10,000 in the aggregate.

Emergency Paid Sick Leave

- The Act requires covered employers to immediately provide employees, regardless of their length of service, with up to 80 hours of paid sick leave if the employee is unable to work or telework due to a leave relating to specified COVID-19 causes (see below list). Part-time employees would receive a proportionally similar amount, based on their average hours worked in a two-week period.
 - The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
 - The employee has been advised by a healthcare provider to self-quarantine due to COVID-19 concerns.
 - The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 - The employee is caring for an individual who is (i) subject to a quarantine or isolation order or (ii) has been advised by a healthcare provider to self-quarantine.
 - The employee is caring for a son or daughter whose school or place of care has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19.
 - The employee is experiencing any other substantially similar condition as specified by the Secretary of Health and Human Services.
- The amount of pay an employee will receive while on leave will vary depending on the reason for the leave. Generally, it must either be paid at an employee's regular rate of pay (capped at \$511 per day and \$5,110 in the aggregate) or at two-thirds the employee's regular rate of pay (capped at \$200 per day and \$2,000 in the aggregate).
- Unused emergency paid sick leave will not carry over to the next year.

These leave provisions will take effect within 15 days of March 18 and will expire December 31, 2020.

Tax Credits

The Act provides refundable tax credits to help employers cover the cost of providing these new paid leave benefits. The credits apply against the employer portion of Social Security taxes and are equal to 100% of the qualifying paid leave wages paid by the employer, up to certain limits. They are computed on a quarterly basis and are available through the end of 2020. The maximum number of days that may be taken into account in calculating the tax credit is 10 per employee, across all quarters.

FMLA-Related Credits

- The qualified leave credit is generally limited to \$200 per day per employee and \$10,000 in the aggregate.

Emergency Paid Sick Leave Credits

- The qualified leave credit taken into account varies based on the reason for the leave:
 - Employees who are subject to a quarantine or isolation order, who have been advised to self-quarantine or are seeking a COVID-19 diagnosis will have qualified sick leave wages capped at \$511 per day.
 - Employees who are caring for an individual who is quarantined or for a child whose school or place of care is closed will have qualified sick leave wages capped at \$200 per day.

Health Plan Credits

- The FMLA-related and emergency paid sick leave credits will be increased to include amounts employers pay for an employee's health plan coverage while on leave.

Lastly, employers must post a model notice to employees about their rights under the Act. The notice is not yet available but will be published within seven days by the Secretary of Labor.

If you have any questions about the Families First Coronavirus Response Act, please contact a member of the Kutak Rock [Employee Benefits Practice Group](#).

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