



Contact:
Jeffrey A. Hild, Director of Client Relations
4320 Winfield Road, Suite 450
Warrenville, IL 60555
(630) 665-4440
Jeffrey.hild@duganlopatka.com

FOR IMMEDIATE RELEASE

Employer Paid Leave Under the Families First Coronavirus Response Act

By Andrew Schmidt, Tax Manager

WARRENVILLE, ILLINOIS (March 31, 2020) - On March 18, 2020 the President signed into law the Families First Coronavirus Response Act (H.R. 6201). The bill includes, among other provisions, the Emergency Paid Sick Leave Act, and the Emergency Family Medical Leave Expansion Act. These acts include many important provisions for employers with less than 500 employees to understand. The provisions of both acts do not go into effect until April 1, 2020. There is an exception to the requirements of the two acts for employers with 50 employees or less if complying with the provisions of the act would jeopardize the ability of the business to continue as a going concern.

Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act (“the Sick Leave Act”) provides that all employers with 500 employees or less provide up to 80 hours of paid sick leave to employees who are unable to work or telework due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;

4. unable to work or telework due to a need for leave because the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.
5. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

For reasons 1, 2, or 3, employees are entitled to pay equal to their regular rate of pay (or the applicable minimum wage if greater) capped at \$511 per day and \$5,110 in the aggregate over a two-week period. The pay is reduced to \$200 per day and \$2,000 in the aggregate for reasons 4 and 5. A part-time employee's regular rate of pay is based off the number of hours that such employee works on average over a two-week period.

The employer is required to pay all eligible employees regardless of how long the employee has been employed by the employer. Employers are prohibited from requiring eligible employees to use other forms of paid leave (ex: vacation, personal days, and other paid sick leave already established by the employer) before using the paid sick leave under this act.

Family Medical Leave Expansion Act

The Family Medical Leave Expansion act ("the FMLEA") requires all employers with 500 employees or less to provide paid leave for an employee who is unable to work or telework due to a need for leave because the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.

An eligible employee is entitled to be paid at 2/3 their regular rate of pay (or 2/3 the applicable minimum wage if greater) capped at \$200 per day and \$10,000 in the aggregate over a 10-week period.

An employee is not eligible for pay under the FMLEA until after taking two weeks of paid sick leave under the sick leave act. In total, the employee is eligible for up to 12 weeks of paid leave or \$12,000. An employee must be employed for at least 30 days to be eligible for paid leave under the FMLEA.

Refundable payroll tax credits

Under both the Sick Leave Act and the FMLEA, the federal government will fund 100% of the eligible leave through a refundable payroll tax credit. The credit is equal to the amount of eligible sick or FMLEA leave paid under the two acts.

In an effort to provide immediate relief to employers, the amount of payroll taxes that an employer would normally be required to deposit at the time of their regularly scheduled payroll tax deposit dates can be reduced by the amount of the paid leave under both acts. If the amount of the paid leave exceeds the total payroll taxes due, no deposit is required by the employer. Additionally, the IRS is expected to provide a method for employers to request accelerated payment when the paid leave exceeds the payroll taxes normally due. The total credit actually claimed would be reported on the employer's quarterly payroll tax returns. Two examples below illustrate this.

Example #1: If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.

Example #2: If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.

“Payroll taxes” under the credit provisions include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

Similar credits are available to self-employed individuals. These credits will be claimed on their income tax return and will reduce estimated tax payments.

The Treasury Department and the Department of Labor are expected to provide additional guidance during the week of March 30th that clarifies, amongst other items:

1. Eligibility for the under 50 employees’ exemption
2. Method for requesting accelerated payment of the refundable tax credits
3. Claiming the credit on quarterly payroll tax returns.

We will continue to keep you updated as this guidance becomes available.

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