

## Families First Coronavirus Response Act

- Signed March 18, 2020. Effective date no later than April 2, 2020. Ends December 31, 2020
- Expands the Family and Medical Leave Act and Creates new federal paid sick leave program
- Provides employer tax credits for paid sick leave and paid FMLA leave
- Expands food assistance

### Expansion of FMLA – What is new?

- Through 12/31/2020 employees employed by employers with fewer than 500 employees and who have been on the job at least 30 days have the right to take up to 12 weeks of job-protected leave because their child's school has been closed, or the child care provider is unavailable due to the coronavirus.
- Child Care Provider – a provider who receives compensation for providing child care services on a regular basis
- School – and 'elementary school' or 'secondary school' as such terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965
- The first 10 days of leave may be unpaid
  - During this time an employee may elect to substitute any accrued vacation leave, personal leave, medical or sick leave for any unpaid leave.
  - Keep state and local laws in mind.
- The remainder of this leave must be paid at the rate of at least 2/3 of the employee's regular rate of pay; not to exceed \$200 per day and \$10,000 in the aggregate.

### Emergency Paid Sick Leave Act

Summary: During the time period outlined in the Act (April 2-December 31, 2020), designated are required to provide eligible employees with two weeks of paid sick leave.

- Covered Employer = Private entity or individual employing fewer than 500 employees and some public agencies.
- Eligible Employee = An individual who is an "employee" as defined in the Fair Labor Standards Act, including private and public employees. Included both full-time and part-time employees.
- Paid sick time must be provided by an employer to an employee **who is unable to work (or telework)** for the following reasons:
  - To self-isolate if the employee is diagnosed with coronavirus
  - To obtain a medical diagnosis or care if the employee is experiencing the symptoms of coronavirus.
  - To comply with the recommendation of a health care provider or public official that the employee self-isolate due to coronavirus concerns.

- The employee is caring for an individual who is quarantined or advised to self-isolate.
- The employee is caring for a son or daughter if the school or place of care has been closed, or the child care provider is unavailable due to coronavirus
- The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services
- **Emergency Paid Sick Leave – Compensation**
  - Covered employers must provide and eligible employee with up to two weeks paid sick leave for any qualifying reason
  - For a full-time employee, this is 80 hours/two weeks' salary
  - For a part-time employee, this is the number of hours worked on average over a two week period.
  - Compensation must include the employee's regular rate of pay, including non-discretionary compensation.
  - Paid sick leave is available for immediate use. Employer cannot require employee to use other available time before paid sick leave.
  - Paid sick time is capped at \$511 per day (\$5,110 in the aggregate) for requirements related to the individual employee.
  - Paid sick time is capped at \$200 per day (\$2,000 in the aggregate) for requirements related to care for another individual, or care for a son or daughter when school or child care is closed.
  - Paid sick leave is in addition to any existing paid leave benefit provided by the employer as of the date of enactment.
  - Employer cannot require the employee to find their own replacement.
- **Emergency Paid Sick Leave – other**
  - Employers may not discipline or otherwise discriminate against employees taking leave under the Act, or those who file a complaint under the Act.
  - Non-compliance will be treated as a violation of the minimum wage provision of FLSA.
  - Employers must post and keep posted in conspicuous places on the premises of the employer, where notices are normally posted, a notice prepared by the Sec. of Labor (a model notice is expected within the week).
- **Emergency Paid Sick Leave – Exceptions**
  - Secretary of Labor to issue regulations relating to exemption of small businesses with fewer than 50 employees from the Paid Sick Leave provisions, when the imposition would jeopardize the viability of the business.
  - An employer of a health care provider or emergency responder may exclude such employees from the application of these provisions.
- **Emergency Paid Sick Leave – Tax Credits**
  - Provides for a series of refundable tax credits for employers
  - Up to \$200 per day is credited with respect to FMLA leave and,
  - Up to \$511 per day for Paid Sick Leave
  - Subject to certain caps, employers may recover 100% of the qualified benefits paid

- Employers can take the tax credit against the employer's portion of social security taxes, and against Hospital Insurance Taxes paid.

**SMA extends much gratitude to David Barron at Cozen O'Connor for assisting with this information.**