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Date: March 30, 2020
To: Employers during the Coronavirus pandemic
From: The Lefton Group, LLC
RE: Effect of Families First Coronavirus Response Act (FFCRA)

The Families First Coronavirus Response Act (FFCRA) takes effect on Wednesday, April 1, and expires December 31. There are two key provisions Employers should be aware of:

1. Sick leave: requires up to 80 hours of paid sick time for COVID-19-related reasons.
2. Family leave: expands the Family and Medical Leave Act (FMLA) to require paid leave for limited child-care situations related to the pandemic.

Here's what it means:

1. Starting Wednesday, all Employees are entitled to paid sick time due to the pandemic.
2. This applies to Employees who are unable to work – whether on site or remotely via electronic connection. (If they are able to work remotely, they should work remotely and continue business operations as usual – to the extent that's possible.)
3. This applies only to Employers with 500 or fewer Employees. Employers with fewer than 50 Employees may be able to get an exemption if compliance would be too burdensome, but the guidelines for requesting such an exemption have not yet been issued. Employers of health care providers and emergency responders may be excluded.
4. If the Employee is unable to work because he is quarantined (pursuant to federal, state or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis, he is entitled to up to 80 hours of pay at his regular rate of pay, up to a maximum of \$511 a day. (Total \$5,110.) Part-timers are pro-rated.
5. If the Employee is unable to work because he needs to care for someone subject to quarantine (pursuant to federal, state or local government order or advice of a health-care provider), or because he must care for a child whose school or day care is unavailable due

to COVID-19, he is entitled to up to 80 hours of pay at two-thirds his regular rate of pay, up to a maximum of \$200 a day. (Total \$2,000.) Again, part-timers are pro-rated.

6. The Department of Labor guidance does not specifically address Employers who had provided paid sick leave before the pandemic, but there does not appear to be any requirement for *extra* sick leave as long as an Employer is providing 80 hours specifically for the coronavirus starting April 1. So if an Employee already has sick leave (80 hours) in his bank, that is probably sufficient, except an Employer needs to ensure that it is paid out appropriately and accounted for, as most Employers will qualify for dollar-for-dollar reimbursement for all wages paid under FFCRA. Further guidance is expected shortly.
7. If an Employee has used up his sick leave already and does not have it in his bank, the Employer must ensure that he gets 80 hours to use for COVID-19, as explained above.
8. This sick leave is not retroactive; the requirement starts April 1. That means that if a person has already taken two weeks of sick leave due to COVID-19, he gets another two weeks starting April 1. And he may use it at any time until it expires on December 31, 2020.
9. That brings us to documenting the need. Since the requirement lasts until December 31 – and since we all envision that the coronavirus crisis will be over by then – Employers will want to ensure that those seeking to “use it or lose it” by December 31 are really entitled to use it. The DOL has not yet given guidance on what Employers may do to verify the need for the leave or to discipline Employees if fraudulent use is confirmed, but in the absence of such specific guidance, the standard would be the same as for other sick- or FMLA-related absences.
10. At this stage, it is unclear whether the state’s “stay home” order constitutes a quarantine such that Employees who do stay home qualify for sick pay, as mentioned in paragraph 4 above. Many are working from home, and if they are, they should be paid. Those who cannot work from home because they are sick should get sick pay, starting Wednesday.
11. Sick pay for part-time Employees should be pro-rated based on the number of hours they work on average during a two-week period. If a part-time Employee’s schedule varies, determine the average over the prior six months. If he hasn’t worked for the Employer for six months yet, determine the entitlement based on anticipated average.
12. Regarding family leave, if an employee has to take care of a child because the child’s school or day-care facility is closed due to COVID-19, the Employee is eligible for 12 weeks of family leave – the last 10 weeks paid at a rate of 2/3 of the Employee’s salary up to a maximum of \$200 a day. (\$10,000 total.)
13. A person must be employed for at least 30 days to take advantage of this family leave provision, but it need not be 30 consecutive days before April 1. (Earlier shifts of a temporary worker count, for example.)

14. It is unclear whether the Employee must need the leave to care for **his or her own child** or just “a child.” The DOL has put out guidance both ways, and a clarification is expected shortly.
15. Under the family and medical leave provisions of FFCRA, the first 10 days an Employee misses work due to a school/child-care closure are unpaid. However, since the sick leave provisions specifically provide payment (up to \$200 a day for 10 days) in the event of a school/child-care closure, that provision applies first. Call the first 10 days “sick leave” and pay it at 2/3 of the person’s salary, up to \$200 a day, then move him to family leave for the following 10 weeks that he has to care for a child or children during school or day-care center closure. During those 10 weeks, the Employee is paid at 2/3 of his regular rate of pay, up to \$200 a day. (Maximum total \$12,000.)
16. This appears to mean that an Employee must be paid through June if his child’s school is closed, even though schools generally close at the beginning of June anyway with no compensation for parents. Further guidance is expected on this.
17. Because FFCRA defines child as “under 18 years of age,” this also means that an Employee must be paid through June if his child’s school is closed even if the child is a teenager who would normally be at home alone during the summer anyway. Further guidance is expected on this.
18. This new FFCRA family leave policy applies **only** to people who cannot work due to the necessity of caring for a child or children. It does not apply to regular FMLA leave, including for the illness of the Employee or family member for conditions not cited in the new law. If a person needs FMLA to care for a loved one suffering from COVID-19, the FMLA leave remains unpaid. The FFCRA does not change that.
19. Employers should keep track of money paid out for sick and family leave under FFCRA, as they qualify for “dollar-for-dollar reimbursement” through tax credits. It is unclear exactly how that will work, but we anticipate more definitive guidance shortly.

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