Labor Lawyer COVID-19 Update: Family First Act signed by President Trump

19 March 2020
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With hour-by-hour developments, here is an update on yesterday’s Labor & Employment blog post.

Labor Lawyer COVID-19 Update: Family First Act
signed by President Trump
(Family First Coronavirus Response Act)
by
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As we expected, the federal government will provide additional sick leave relief and paid child care leave for employees; in anticipation of things to come, California will ease employers’ mass layoff notice requirements.

Families First Coronavirus Response Act

Yesterday, March 18, President Trump signed the Families First Coronavirus Response Act, the legislature’s response to the COVID-19 health crisis. Private employers with fewer than 500 employees and all government employers must be ready to offer emergency family and medical leave and emergency paid sick leave to eligible employees. Additional information and further clarification on these sweeping provisions will likely be provided in the coming days through federal guidance. This program will become effective within 15 days after its enactment by President Trump and is set to expire on December 31, 2020.

Emergency Paid Sick Leave

The paid sick leave portion of the Act requires covered employers to provide all employees who cannot work or telework due to COVID-19 related circumstances, with up to 80 hours of paid sick time, prorated for part-time employees. Employees are eligible if they meet any one of the following circumstances:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
5. The employee is caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of the son or daughter is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

If an employee is taking the leave for any one of the first three reasons listed above, the employee must be compensated at the higher of his or her regular rate, the federal minimum wage, or the local minimum wage. If an employee is taking the leave for one of the three subsequent reasons listed above, the employee must be paid two-thirds of the rate he or she
would otherwise receive. This paid leave is separate and above any existing sick leave entitlements that employees may already have.

Compliance with the provisions of the emergency paid sick leave portion of the Act also requires employers to post notices explaining employees’ entitlement to the paid sick leave. Similar to the emergency family and medical leave provisions, the Act provides that the Secretary of Labor shall have the authority to exclude certain health care providers and emergency responders, as well as small businesses with fewer than 50 employees from the paid sick leave requirements.

Emergency Family and Medical Leave

Employees who have been employed for 30 consecutive days will be eligible for 12 weeks of job-protected leave if they are unable to work (or telework) due to a need to care for a child under 18 years of age because the child’s school or place of care has been closed or because the child care provider is unavailable due to COVID-19. While the first 10 days of the leave may be unpaid, the remainder must be paid at no less than two-thirds of an employee’s regular rate of pay, not to exceed $200 per day and $10,000 in the aggregate. Employees may choose to use previously available sick leave, vacation leave, or paid time off; however, employers cannot require employees to utilize such leave. The Secretary of Labor has the authority to issue regulations to exclude certain health care providers, as well as employers with fewer than 50 employees, from the emergency family and medical relief provision’s requirements.

Tax Credits

Tax credits are available to help offset the costs of the paid leave requirements, subject to certain caps. Employers can file for a refundable tax credit for paid sick leave or family leave—they may seek credit of up to $511 per day for an employee’s own sickness or self-isolation and a credit of up to $200 per day when employees have taken time off work to care for a child after a school or child care closure or an ill family member.

California’s Executive Order N-31-20 in Anticipation of Mass Lay-offs

As California employers brace for the difficult days ahead and face tough choices about its workforce, California’s Governor Gavin Newsom signed California’s Executive Order N-31-20 on March 17, shortening the notice requirements mandated by California’s Worker Adjustment and Retraining Notification (WARN) Act applicable to unforeseeable mass layoffs, relocations and terminations from 60 days to as soon as practicable. Pursuant to the Order, the Labor Workforce and Development Agency should provide further guidance on the order by March 23, 2020.

Under the Order, an employer must still give the same types of notice to the affected employees and government agencies, however, the employer is not required to provide the ordinary 60 days’ written notice so long as the employer gives as much notice as is “practicable” and, at the time such notice is given, provides a brief statement of the basis for reducing the notification period. The employer must order “a mass layoff, relocation, or termination” that is caused by COVID-19-related “business circumstances that were not reasonably foreseeable as of the time that notice would have been required. Finally, an employer must include the following statement in any written notice given after March 17, 2020: “If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at labor.ca.gov/coronavirus2019.” The Federal WARN Act already includes unforeseeable business circumstances as an exception to the 60 day notice
period. Like the Order issued by Governor Newsom, the exception applies to both closings and layoffs that are caused by business circumstances that were not reasonably foreseeable at the time notice would have otherwise been required. Given that an important indicator of an unforeseen business circumstance is that the circumstance is caused by some sudden, dramatic, and unexpected condition outside of the employer’s control, the COVID-19 health crisis would likely qualify under this exception.

Employers need to stay abreast of changes being made in response to the coronavirus pandemic and must update policies and practices to ensure that they are fulfilling their obligations under the new laws and regulations. Our team of labor and employment attorneys remain available to assist you with any of the unique questions and needs facing your business.

Click here for the latest articles on the coronavirus. Select individual articles on these topics are listed below for your convenience.

- Labor & Employment Update: COVID-19: Advice for California Employers
- Coronavirus: Creative strategies to mitigate financial impact
- Coronavirus COVID-19 force majeure: Contract provisions and governing law are important
- COVID-19 coronavirus as force majeure contract defense: history and origins
- Coronavirus as Force Majeure Event – What Hotel Owners and Operators Should Consider
- Coronavirus & the Hotel Industry – Responsibilities, Liabilities, Implications

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