Cullen | Dykman

Families First Coronavirus Response Act Provides Additional Leave Rights to Certain Employees in Connection with Coronavirus Pandemic

March 20, 2020

On March 18, 2020, President Trump signed into law the "Families First Coronavirus Response Act." The law addresses three separate issues: emergency family and medical leave, emergency paid sick leave, and refundable tax credits. In this piece, we will focus on the first two issues. Preliminarily it is important to understand that the law does not apply to entities which employ 500 or more employees. Why such large companies are excluded from coverage is not explained in the law. This law becomes effective on April 2, 2020, and expires at the end of 2020 (unless renewed by Congress).

Emergency Family and Medical Leave Expansion Act ("EFMLA")

Most employers are familiar with the existing Family and Medical Leave Act ("FMLA"). The FMLA covers employers of 50 or more employees. Employees are eligible for FMLA leave if they work at a location where there are 50 employees within a 75-mile radius. Eligible employees are entitled to 12 weeks of unpaid leave in any 12-month period, provided that they have worked for one year or more and worked at least 1,250 hours during the previous 12 months. Leave can be taken for the employee's own serious health condition, to care for a close relative with a serious health condition, in connection with the birth or adoption of a child, or for certain military-related reasons.

By contrast, the EFMLA applies to all employers with fewer than 500 employees. Employees need only have worked for the employer for 30 calendar days to be eligible. Under the EFMLA employees are entitled to 12 weeks of leave for a "qualifying need related to a public health emergency". However, a "qualifying need" is defined narrowly. It applies only to care for a child under the age of 18 as a result of school, place of care, or childcare closings in the wake of COVID-19 mitigation efforts. Unlike other leave laws, it does not cover the employee's own serious health condition or care for a spouse. The first 10 days of EFMLA leave is unpaid (although the employee can apply paid time off benefits offered by the employer, if any). Thereafter, employers must pay eligible employees an amount equal to 2/3 of the employee's average wage, not to exceed $200 per day or $10,000 in total, for up to 12 weeks. Employers of fewer than 50 employees can seek an exception from the law if they can show that compliance would jeopardize the viability of the business.

Note that the 12 weeks of EFMLA leave are included in the 12 weeks of FMLA leave, i.e. they are not added to one another; 12 weeks is still the maximum entitlement. Of course, employers are free to be more generous than the

law requires.

Emergency Paid Sick Leave Act ("EPSLA")

Under the EPSLA, covered employers (with fewer than 500 employees) must provide sick leave to eligible employees who are unable to work (or work remotely) for any of the following reasons:

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 a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. The employee is caring for his or her son or daughter because the school or place of care of the employee's son or daughter has been closed or is unavailable due to COVID-19 precaution; or
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.

Full-time employees are eligible to receive two weeks (80 hours) of paid sick leave. Part-time employees are eligible for prorated benefits. Sick pay under items 1, 2 and 3 is capped at $511 per day or $5,110 in total. Sick pay under items 4, 5, and 6 is capped at $200 per day and $2,000 in total.

EPSLA leave is in addition to any existing leave policies of the employer; the employer cannot claim a credit for leave time already taken under its policies. These benefits apply to all employees on and after the effective date of the law, regardless of time in service with the employer.

If you have questions regarding any aspects of employment law and any implications the COVID-19 virus has caused or will cause to your place of business, feel free to contact Thomas B. Wassel at (516) 357-3868 or via email at **twassel@cullenllp.com**, James G. Ryan at (516) 357-3750 or via email at **jryan@cullenllp.com**, or Hayley B. Dryer at (516) 357-3745 or via email at **hdryer@cullenllp.com**.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Practices

- Labor and Employment