PART 3: An Employer's Guide to the COVID-19 Coronavirus Outbreak & FAQs

Legal Alert

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Click here for Part 2: An Employer's Guide to the COVID-19 Coronavirus Outbreak & FAQ

Employers' and governments' responses to this COVID-19 pandemic are moving at unprecedented speed. This week, the Families First Coronavirus Response Act (the Act) was passed by U.S. Congress and signed into law. It goes into effect on April 2, 2020 and expires on December 31, 2020. Now that we have the final law, here are some key questions that are arising:

Q: I have an employee who has or may have a COVID-19 diagnosis and/or must quarantine due to the risk of exposure to others. What leave is due?

A. That employee is normally entitled to (i) up to 80 hours of paid Emergency Sick Pay under the Act (capped at $511/day or $5,110 in the aggregate); (ii) accrued sick leave and paid time off in accordance with the employer's policies; (iii) unpaid (other than accrued paid time off) Family and Medical Leave Act ("FMLA") leave, if the employee meets the requirements; (iv) any applicable state law leave; and (v) as needed, any leave that is deemed a reasonable accommodation. Part time employees do not receive the full 80 hours, but receive the number of hours they regularly work in a two-week period. Employers cannot require employees exhaust accrued sick leave and/or paid time off before using Emergency Sick Pay.

Q: I have an employee caring for a family member with a COVID-19 diagnosis. What leave is due?

A. That employee is normally entitled to (i) up to 80 hours of paid Emergency Sick Pay under the Act paid at two-thirds the employee's regular rate of pay (capped at $200/day or $2,000 in the aggregate); (ii) accrued sick leave and paid time off in accordance with the employer's policies; (iii) unpaid FMLA leave, if the employee meets the requirements; and (iv) any applicable state law leave. Part time employees do not receive the full 80 hours, but receive the number of hours they regularly work in a two-week period. Employers cannot require employees exhaust accrued sick leave and/or paid time off before using Emergency Sick Pay.

Q: I have an employee caring for a child whose school or place of care is closed for coronavirus precautions. What leave is due?

A. That employee is normally entitled to (i) up to 80 hours of paid Emergency Sick Pay under the Act paid at two-thirds their regular rate of pay (capped at $200/day or $2,000 in the aggregate); (ii) accrued sick leave and paid time off in accordance with the employer's policies; and (iii) paid emergency FMLA leave under the Act paid at two-thirds their regular rate of pay (capped at $200/day or $10,000 in the aggregate); and (iv) any applicable state law leave. Note for this purpose only, there are lower eligibility requirements for FMLA leave such that it is extended to employees who have worked just 30 days and applies to employers with 1-500 employees. Part time employees do not receive the full 80 hours, but receive the number of hours they regularly work in a two-week period. Employers cannot require employees exhaust accrued sick leave and/or paid time off before using Emergency Sick Pay.

Q: Are any employers exempt from the leave requirements of the Act?

A. Yes. Employers with 500 or more employees are exempt. There is also a provision that allows healthcare providers and emergency responders to opt out of the leave requirements, however, the Act also allows the Secretary of the Department of Labor to designate certain healthcare providers and emergency responders who may be exempt, which suggests that not all healthcare providers and emergency responders will be deemed exempt. We are still awaiting clarification from the Department of Labor. Additionally, the Act allows the Secretary of the Department of Labor to issue regulations to exempt businesses with fewer than 50 employees from the Act on the basis that the imposition of the leave requirements would jeopardize the viability of the business as on ongoing concern.

Q: Are any employers permitted to perform temperature checks?

A. The U.S. Equal Employment Opportunity Commission (EEOC), which had previously limited the use of temperature screenings, issued an update approving employer's use of temperature screening in response to the current COVID-19 pandemic. This should be viewed as a temporary measure and certain states may still take the position that such screenings violate their anti-disability discrimination laws.

*To learn more about the information presented in this alert, we invite you to contact **Adam Gersh,** or any member of Flaster Greenberg's **Labor and Employment** Practice Group.*

ATTORNEYS MENTIONED

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