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**LEGAL ALERT****Department of Labor Issues Regulations on COVID-19 Paid Sick Leave and Paid FMLA Leave Requirements**

The Department of Labor (“DOL”) has issued temporary regulations for the implementation of the Families First Coronavirus Response Act (“FFCRA”). The FFCRA makes time-limited changes to the Family and Medical Leave Act (“FMLA”) as well as providing for emergency paid sick leave arising out of the COVID-19 global pandemic. The changes are in effect through December 31, 2020.

**Concurrent Application**

The DOL clarified that emergency paid sick leave and emergency family medical leave run concurrently if both are applicable. (See 29 C.F.R. §826.60). Eligible employees receive twelve weeks of expanded family and medical leave to care for a son or daughter whose school or place of care has been closed, or whose child care provider is unavailable, due to COVID-19. The first two weeks (up to 80 hours) are paid under the emergency paid sick leave provisions, and the subsequent weeks are paid under the expanded family medical leave act provisions. However, the DOL also clarifies that if an employee had already used prior emergency paid sick leave or if the employee had already used FMLA, the employee would only be entitled to his or her remaining allotment.

**Eligible Employees**

The FFCRA applies to public agencies with one or more employees, as well as private employers with fewer than 500 employees, unless a private employer’s compliance with the requirements would “jeopardize the viability of the business as a going concern.” FFCRA sections 5100(2)(B)(i)–(ii), 5111(2). The FFCRA also provides that employers may exclude health care providers and emergency responders. Health care providers are defined as: “anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, Employer, or entity. This

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includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.” The definition also includes any individual employed by an entity that contracts with any of these institutions in order to support the operation of the facility.

Emergency responders are defined as: “anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.” The Governor also has the power to designate any individual as an “emergency responder” for the purposes of the FFCRA.

#### **Documentation**

An eligible employee is required to provide documentation containing the following information prior to taking more than one day of emergency paid sick leave or expanded FMLA leave. This basic documentation must include: (1) the employee’s name; (2) the date(s) for which leave is requested; (3) the qualifying reason for the leave; and (4) an oral or written statement that the employee is unable to work because of the qualified reason for leave.

If the employee seeks to take emergency paid sick leave due to a quarantine or isolation order for themselves or an individual they are responsible for caring for, the employee must additionally provide the name of the government entity that issued the Quarantine or Isolation Order. If the employee seeks to take emergency paid sick leave due to an advised self-quarantine, either for the employee individually or on behalf of someone they are responsible for caring for, the employee must provide the name of the health care provider who advised the employee or other individual to self-quarantine due to concerns related to COVID-19.

If the employee seeks to take emergency paid sick leave to care for a son or daughter due to school closure or other unavailability of care, the an employee must additionally provide the name of the son or daughter being cared for; the name of the school, place of care, or child care provider that has closed or become unavailable; and a representation that no other suitable person will be caring for the son or daughter during the period for which the employee takes emergency paid sick leave or expanded FMLA.

An employer may also request an employee to provide such additional material as may be needed for the employer to support a request for tax credits pursuant to the FFCRA. The employer is not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.