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**LEGAL ALERT****FAMILIES FIRST CORONAVIRUS  
RESPONSE ACT SIGNED INTO LAW**

The Families First Coronavirus Response Act was signed into law yesterday. It was enacted to provide changes to the Food and Nutrition Act, the National School Lunch Act, for changes to the Family and Medical Leave Act, to create a paid emergency sick leave for employees impacted by COVID-19, to make changes to unemployment insurance, to provide health care assistance and testing associated with COVID-19, and to provide a system of tax credits associated with employers who are mandated to pay for sick leave and paid leave under FMLA. This update focuses on those changes impacting our local government clients.

**Changes to Food and Nutrition Act**

During fiscal year 2020, in any case in which a school is closed for at least five (5) consecutive days during a public health emergency designation due to COVID-19, each household containing at least one (1) member who is an eligible child attending said school shall be eligible to receive assistance pursuant to a State agency plan approved by the Secretary of Agriculture. The level of benefits shall be determined by the Secretary of Labor in an amount not less than the value of meals at the free rate over the course of five (5) school days for each eligible child in the household. A State agency may provide assistance through the EBT card system established under the Food and Nutrition Act.

**Changes to National School Lunch Act**

For school districts, the process for Illinois receiving a waiver from the Richard B. Russell National School Lunch Act (the "School Lunch Act") is much less restrictive in that the State is not required to prove that the waiver, in connection with COVID-19, from the School Lunch Act will not reduce the Federal costs to administer the program. The Secretary of Agriculture is to issue regulations that would provide a Federal-wide waiver to all States that do not elect out of the waiver from the School Lunch Act requirements in light of COVID-19. Further, the Secretary of Agriculture is granted the authority to issue waivers with regard to nutritional content if there are supply chain disruptions, and to issue waivers to permit non-congregate feeding.

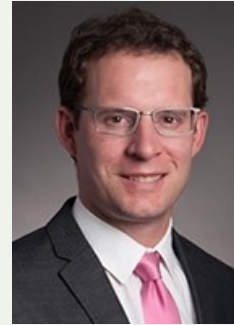
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## **Changes to FMLA (Emergency Family and Medical Leave Expansion Act)**

Commencing 15 days from March 18, 2020 and through December 31, 2020, for employers with under 500 employees (the Secretary of Labor may issue regulations to proscribe an exemption for employers with fewer than fifty (50) employees), the Family and Medical Leave Act (“FMLA”) is being expanded to provide for a specific paid family and medical leave exception for certain employees impacted by COVID-19. In general under the FMLA, an employee is protected from taking a family or medical leave without fear of losing his or her position for a twelve (12) week period, but this leave is not to be compensated. An employee that meets the qualifications below may take a paid emergency family and medical leave up to twelve (12) weeks in a twelve (12) month period for each day that the following requirements are met.

The employee (who must have been employed by the employer for at least thirty (30) days) must be unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to an emergency with respect to COVID-19 declared by a Federal, State or local authority. The Secretary of Labor may proscribe regulations to exclude certain health care providers and emergency responders from the definition of eligible employee, and the employer of employees who are health care providers or emergency responders may elect to exclude such employees from the application of this emergency family and medical leave act.

The first ten (10) days of the emergency family and medical leave are unpaid, although, under the Emergency Paid Sick Leave Act (below), the leave is to be paid. The employer may not mandate the employee utilize his or her accrued vacation, sick or personal leave towards the same. Thereafter, the emergency leave shall be paid as long as each day is qualified, up to the full twelve (12) week period (including the initial ten (10) unpaid leave days). Payment to the employee during the paid FMLA leave shall be equal to 2/3rd of the employee’s regular compensation, but in no event shall it exceed \$200 per day and \$10,000 in the aggregate. If the employee is an hourly employee, the paid leave would be equal to the weekly average of hours worked by said employee over the past six (6) months prior to the leave, and, if the employee has not been employed for that period of time, then the number of hours the employee anticipated to work when he or she was originally hired.

The right to return to work under the Family and Medical Leave Act shall apply, unless the employer employs less than twenty-five (25) employees, and the position for said employee has been cut due to the impact of COVID-19. Said employer with less than twenty-five (25) employees shall be required to reasonably accommodate said employee with a position similar to the one the employee held at the time of the emergency leave, and if one is not available, the employer shall notify the employee at anytime within the following twelve (12) month period when a position does become available.

## **Emergency Paid Sick Leave Act**

In addition to the changes to FMLA, the Emergency Paid Sick Leave Act has been signed into law. Commencing 15 days from March 18, 2020 and through December 31, 2020, employers with less than 500 employees (or all public agencies, including state, local governments and political subdivisions of the same, who employ at least one (1) employee) shall provide paid sick time (“PST”) to any employee (regardless of how long the employee has been employed) who is: (1) subject to Federal, State or local quarantine or isolation order related to COVID-19; (2) self-quarantined, at the advice of a health care provider, due to concerns related to COVID-19; (3) experiencing symptoms of COVID-19 and is seeking a medical diagnosis; (4) caring for an individual who is subject to an order of quarantine in subparagraph (1) above or has been advised as described in subparagraph (2) above; (5) caring for a son or daughter if the child’s school or place of care has closed due to COVID-19; or (6) 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. An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the PST.

Full-time employees will be entitled to eighty (80) hours of sick leave. Part-time employees will be entitled to the number of hours that such employee works, on average, over two weeks. PST provided to an employee under this Act shall cease beginning with the employee's next scheduled work shift immediately following the termination of the need for PST. PST, afforded by this Act, will not carry to a subsequent year.

The compensation to be paid to the employee for the PST shall be the greater of the following: (i) the employee's regular rate of pay under FLSA; (ii) the minimum wage rate under FLSA; or (iii) the minimum wage in effect in the State or locality, whichever is greater, where the employee is employed. However, the sick leave compensation for an employee who is on PST for subparagraphs 4, 5 or 6 above shall only be entitled to 2/3rd of the amount above. Under no circumstance shall the PST for subparagraphs 1, 2 or 3 exceed \$511 per day and \$5,110 in the aggregate, or, for purposes of subparagraphs 4, 5 or 6 exceed \$200 per day and \$2,000 in the aggregate.

The PST afforded by this Act shall be in addition to any time an employer already provides under existing policies, and employers may not change their existing policies to avoid extra time being provided, from this Act. Further, an employer may not require an employee that is using PST to try to find a replacement employee for missed work. Unlike the FMLA leave above where the employee must have been employed for thirty (30) days to be eligible for the special FMLA leave, an employee will not be required to have been an employee of an employer for any prescribed duration before the PST this act provides is made available. Lastly, the PST provided by this Act can be used before any paid sick time already afforded by an employer's existing policy, meaning the use of the PST provided by this Act will not reduce the PST that the employee would have otherwise had under an employer's existing policy.

The Secretary of Labor will create a model notice to employees of the PST provisions of this Act, and employers must keep such notice posted in conspicuous common areas for employees to see. The Secretary of Labor shall have the authority to issue regulations to exclude certain health care providers and emergency responders from being eligible for this PST and to exempt small businesses with fewer than fifty (50) employees.

Employers cannot retaliate against any employee who uses the PST provided by this Act or who files a complaint under this Act, or who intends to testify in a proceeding related to a complaint under this Act.

An employer's violation of the allocation of PST hours provisions of this Act will be considered to have failed to pay minimum wages in violation of Section 6 of the FLSA and be subject to the penalties described in sections 16 and 17 of the FLSA. An employer's violation of the prohibited termination sections shall be considered to be in violation of section 15(a)(3) of the FLSA and be subject to the penalties described in sections 16 and 17 of the FLSA.

## Tax Credits for Paid Sick Leave and FMLA

Congress has provided for credits for the 6.2% Social Security tax imposed on all PST and FMLA wages granted under the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act. **However, this credit does not apply to any State or political subdivision thereof (or any agency or instrumentality of any of the foregoing).**

For any questions or comments you might have regarding this newsletter, please feel free to contact:

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