

SUMMARY OF FAMILIES FIRST CORONAVIRUS RESPONSE ACT¹ (“FFCRA”)
HR 6201

Emergency Sick Leave

- Cities or towns with more than one (1) employee must provide full-time employees 80 hours of paid sick leave if the employee cannot work (or telework) because of any of the following qualifying reasons:
 - (1) the employee is subject to a Federal or State COVID-19 quarantine or isolation order;
 - (2) the employee has been advised by a health care provider to self-quarantine due to COVID 19 concerns;
 - (3) the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
 - (4) the employee is caring for an individual described in (i) or (ii) above;
 - (5) the employee is caring for a child whose school or place of care is closed, or the child care provider of the child is unavailable, due to COVID-19 precautions, or;
 - (6) the employee is experiencing substantially similar conditions specified by the Secretary of Health.
- ** Part-time employees are entitled to paid sick leave, too. However, the leave time is not 80 hours, instead leave time for part-time employees is equal to the number of hours that such employee works, on average, over a 2-week period.*
- Cities have the option to exclude health care providers and emergency responders from coverage.
- This sick leave is available for immediate use regardless of the employee’s tenure at the city or town.
- Paid sick time will not carry over from year to year.
- Employees taking leave to care for themselves (*see qualifying reasons (1), (2), and (3) above*) must be paid their regular rate of pay. However, sick leave pay for qualifying reasons (1), (2), and (3) is capped at \$511 per day and \$5,110 in the total.

¹ For the full text of the Act see (<https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>).

- Employees taking time off to care for family members (*see qualifying reasons (4), (5), and (6) above*) must be paid at two-thirds of their regular rate of pay. Sick leave pay for employees under qualifying reasons (4), (5), & (6) is \$200 per day and \$2,000 in the total.
- Employees are entitled to use this emergency sick leave *before* using any paid leave the employee has accrued through an existing city leave program. In other words, a city cannot require an employee to use any other available paid leave before using the sick time.
- Cities are prohibited from:
 - o (1) requiring employees to find replacements to cover their hours during time off, or;
 - o (2) discharging or discriminating against employees for requesting paid sick leave or filing a complaint against the employer related to such.
- Cities must post a notice containing information regarding the emergency sick leave provisions; the Labor Department will create a model notice no later than 7 days after the Act is enacted.
- The Department of Labor is authorized to issue regulations to (1) exclude certain health care providers and emergency responders from paid leave benefits; (2) exempt small businesses with fewer than 50 employees from the paid leave requirements “when the imposition of such requirements would jeopardize the viability of the business as a going concern” (we are unsure whether any Department of Labor regulation allowing an exemption for “small businesses” will apply to cities or towns); and (3) ensure consistency between the emergency sick leave provisions and emergency family leave provisions described below. We will stay up to date on any DOL regulations and update as necessary.

Emergency Family Leave

- Cities and towns must provide up to 12 weeks of FMLA leave for employees who:
 - 1) have been on the job for at least 30 days, and
 - 2) are unable to work (or telework) because
 - a. they need to care for a minor son or daughter because the son’s or daughter’s school or place of care has been closed, or
 - b. if the child care provider of that son or daughter is unavailable due to a COVID-19 emergency.

- The rate of pay for this Emergency Family Leave shall not be less than 2/3rds of the employee's regular rate of pay. The paid leave is capped at \$200 per day and \$10,000 total.
- For the first 10 days of time taken, the employer is not required to pay Emergency Family Leave; however, *see above Emergency Sick Leave requirements*.
- An employee can opt to use accrued paid leave, instead of this Emergency Family Leave.
- The employee on this Emergency Family Leave must be restored to his or her prior position at the end of the leave; however, this requirement does not apply to cities with fewer than 25 employees if the position held by the employee on leave no longer exists due to economic conditions or other changes in the employer's operating conditions caused by the COVID-19 pandemic, and the employer makes reasonable efforts to restore the employee to an equivalent position.
- The Department of Labor is authorized to issue regulations to (1) exclude certain health care providers and emergency responders from paid leave benefits, and (2) exempt small businesses with fewer than 50 employees from the paid leave requirements "when the imposition of such requirements would jeopardize the viability of the business as a going concern" (we are unsure whether any Department of Labor regulation allowing an exemption for "small businesses" will apply to cities or towns). We will stay up to date on any DOL regulations and update as necessary.

Tax Credits

Currently there are no tax credits available for government employers who pay leave under either the Emergency Sick Leave or Emergency Family Leave requirements.

Questions

Please call the AML Legal Department at 501-978-6136.