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## The COVID-19 Coronavirus Response Act



This issue will focus on news and developments related to the COVID-19 pandemic. We begin with the federal legislation aimed at combating the medical and economic impact of the virus and resulting quarantines and sheltering orders. We will end with some guidance for employers of essential workers.

On March 18, 2020, Congress passed the COVID-19 Coronavirus Response Act which focused in large part on increasing workers' eligibility for Family Medical Leave and Paid Sick Leave. The COVID-19 Coronavirus Response Act includes the Emergency Paid Sick

Leave Act and the Emergency Family and Medical Leave Expansion Act.

Under the Emergency Paid Sick Leave Act, employers with 500 or fewer employees must provide up to two weeks paid sick leave to (i) employees subject to government quarantine; (ii) employees advised by a physician to self-quarantine; (iii) employees experiencing COVID-19 symptoms and awaiting a diagnosis; (iv) employees caring for another individual or individuals (not necessarily a family member) quarantining due to a COVID-19; and (v) employees caring for a child unable to attend school due to a school or daycare closure.

Regardless of the length of employment prior to the leave, employees in categories (i), (ii), and (iii) are eligible for 80 hours of full pay capped at \$511 per day. Employees in categories (iv) and (v) are eligible to receive two-thirds of their regular pay for 80 work hours capped at \$200 per day.

Employees who work either part-time or on an irregular schedule should be paid a sick leave hourly rate based on the average number of hours the employees worked in the six months prior to taking paid sick leave. Employees who haven't completed six months of prior employment should be paid a sick leave hourly rate based upon the average number of hours the employees would normally be scheduled to work during a two-week period.

The Emergency Family and Medical Leave Expansion Act does exactly what the name indicates – temporarily expands Family Medical Leave benefits. Whereas the Family Medical Leave Act originally covered employers with 50 or more employees, it now covers employers with 500 or fewer employees. Eligible employees (those employed for at least 30 days prior to taking leave) are eligible for 12 weeks of job-protected leave if that employee needs to care for a child whose school or daycare is closed due to COVID-19. The employees must be unable to perform their job at home.

The first ten days of the employee's leave may be unpaid but the employer must pay a full-time employee two-thirds of his or her regular rate up to a cap of \$200 per day. Part-time employees or employees working irregular hours must also be paid and their hourly rate should be calculated as outlined two paragraphs above for paid sick leave.

Employers with fewer than 25 employees will not be required to return an employee to an equivalent position upon an employee's return to work if the employee's position no longer exists due to an economic downturn or other circumstances caused by the COVID-19 outbreak. However, the employer must still make a reasonable attempt to return the employee to an equivalent position for up to a year following the employee's leave.

This legislation provides refundable tax credits for employers subject to these paid sick leave and family medical leave expansions. Employers are entitled to a refundable tax credit equal to 100% of the qualified sick leave and qualified family leave wages paid each tax quarter. It should be noted that, because this relief takes the form of a tax credit, this relief will only help employers whose paid wages exceed their taxes owed.

These changes will be effective April 2, 2020 and will remain in effect until December 31, 2020.

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## The Next Federal Response: The Stimulus Package



Congress is close to passing a \$2 trillion stimulus package to boost the economy in light of the economic slowdown caused by the COVID-19 pandemic. The details of the stimulus are beginning to emerge as Congress takes steps to vote on the package in the coming days.

The stimulus package will include at least one direct payment to taxpayers. Individuals with annual adjusted gross income of \$75,000 or less will receive \$1,200. Married couples with annual adjusted gross income of \$150,000 or less will receive \$2,400 as well as \$500

per child. The payments will scale back in amount as a couples' or individuals' income increases.

The stimulus package may also include waivers of penalties for early withdrawals from retirement accounts for COVID-19 related reasons and student loan payment deferrals.

Also included in the package is \$250 billion in additional unemployment insurance benefits.

The stimulus package will include a small business interruption loan program providing \$350 billion to small businesses to help them cover payroll and avoid mass layoffs. The details on this program are not yet available, particularly details like how loans are to be repaid, whether loans will be interest free, or whether any of the funds will be available as grants that do not require repayment.

The stimulus package will also include \$500 billion dollars to industries hit hardest by the economic downturn, including \$50 billion to the airlines and \$8 billion to air cargo companies.

Finally, the stimulus package will include \$130 billion in funding for distressed hospitals and \$150 billion for distressed state and local governments.

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## Managing Employees During COVID-19



At this time, in the tri-state area, non-essential employees are under orders from the applicable states governors to stay home from work. But essential employees are still reporting for duty and their employers should implement policies and procedures to monitor for COVID-19 in the workplace.

The Equal Employment Opportunity Commission and the Occupational Safety and Health Administration have both issued guidance allowing employers to ask employees if they are experiencing COVID-19 symptoms (while maintaining confidentiality);

measure employees' body temperature; require employees exhibiting COVID-19 symptoms to stay home; and require employees returning to work to provide a doctor's note.

Although this guidance suggests that the exigency of the COVID-19 outbreak provides employers greater leeway in addressing employee health concerns, employers should not ignore any restrictions that remain under their applicable state laws.

View the guidance from both the Equal Employment Opportunity Commission and the Occupational Safety and Health Administration for further detail on responding to COVID-19 here: <https://www.osha.gov/Publications/OSHA3990.pdf> and [https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm).

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