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SICK LEAVE REQUIREMENTS AND TAX CREDITS IN RESPONSE TO CORONAVIRUS

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act into law. This legislation provides paid sick leave to employees impacted by COVID-19, and employer tax credits to cover the costs of the paid leave benefit.

The bill applies to private employers with fewer than 500 employees, as well as some governmental employers, as explained in more detail below. The DOL can exempt businesses with fewer than 50 employees from the leave benefits if the requirements would jeopardize the viability of the business as a going concern.

The new law takes effect on April 2, 2020 and will remain effective until December 31, 2020. The tax credit can be applied to a taxpayers' 2020 tax return. It is not necessary to take other steps beforehand, if you meet the requirements for the credit, you can apply it on your tax return.

****IMPORTANT NOTE: The 'Phase 3' COVID-19 legislation enacted on March 27 established that the employer tax credits and expanded FMLA can be advanced to employers. The Secretary of the Treasury must develop criteria for the advancing of the credit before advances can take place. We will update members on the details when available.**

Paid leave benefits to employees of covered employers:

- Up to 80 hours of paid sick leave (pro-rated for part-time employees) available for immediate use, regardless of length of employment, if the employee cannot work (or telework) because he/she:
 - Is experiencing symptoms of COVID-19 and seeking a medical diagnosis (paid at 100% of employer rate and capped at \$511/day and \$5,110/total)
 - Is subject to a government quarantine or has been told by a health care provider that he or she should self-quarantine due to COVID-19 (paid at 100% of employer rate and capped at \$511/day and \$5,110/total)
 - Is assisting an individual who must quarantine for those reasons (paid at 66.7% of employee rate and capped at \$200/day and \$2,000/total)
 - Is caring for a child if the school or child-care provider is unavailable due to COVID-19 (paid at 66.7% of employee rate and capped at \$200/day and \$2,000/total)
 - Is experiencing any other substantially similar condition specified by HHS (paid at 66.7% of employee rate and capped at \$200/day and \$2,000/total)

- Up to 12 weeks of expanded FMLA leave, unpaid during the first 10 days, and then paid at 66.7% of the employee rate (capped at \$200/day and \$10,000/total) and available to anyone after 30 days of employment for time to care for the employee's child if the school or child-care provider is unavailable due to COVID-19 and the employee is unable to work (or telework). The bill applies to all public agencies subject to the Fair Labor Standards Act, regardless of the number of employees.
- Only employees in the United States or its possessions or territories are included in the total.

Tax credits for employers to cover costs of employee leave:

- The bill provides employer tax credits to help cover the cost of the employee leave benefits. The credit is computed on a quarterly basis. The employer would take the total amount of qualified sick leave wages paid (in the first two weeks) and qualified family leave wages paid (in the following 10 weeks) during that quarter, and such amounts would be a credit against the employer-portion of social security taxes (at 6.2%) that would otherwise be due from the employer. Any excess amounts above and beyond the employer-portion of social security taxes would be refunded as a credit (as if the employer had overpaid the employer-portion of social security taxes for that period).
 - In effect then, the government will provide a credit against the employer-portion of the social security taxes that would otherwise be due from the employer as follows:
 - Against the social security taxes due for the given period, and then
 - As a refund as if the excess was an overpayment by the employer of the employer-portion of the social security taxes.

For purposes of computing the amount of the credit, there are two relevant periods:

- The First Two Weeks: This credit relates to qualified sick leave wages paid. The credit amount depends on whether the employee is sick, caring for a sick family member, or providing childcare to the employee's child:
 - Employee Sick: The credit is the lesser of the daily wage or \$511/employee, per day, for 10 days.
 - Providing Care to Family Member/Childcare to Child: The credit is the lesser of the daily wage or \$200/employee, per day, for 10 days.
- The Next 10 Weeks: This credit relates to qualified family leave wages paid. The credit is the lesser of the daily wage or \$200/employee, per day, with the credit capped at \$10,000/employee for a given calendar quarter.

Department of Labor Initial Guidance

On March 24, the DOL published its first round of guidance implementing this provision for employers and employees, in three parts:

- [Fact Sheet for Employees](#)
- [Fact Sheet for Employers](#)
- [Questions and Answers](#)

The initial guidance addresses key questions such as:

- How does an employer count its number of employees to determine coverage?
- How can small businesses obtain an exemption?
- How does an employer calculate hours for part-time employees?
- How does an employer calculate wages that employees are entitled to under the law?

The DOL is expected to publish additional fact sheets and FAQs in the near future.

This brief was prepared by David Hollingsworth and your AALU/GAMA Government Affairs Team. Please contact [David](#) with any questions.