

## CLIENT ALERT

March 18, 2020

To: Kluger Healey Clients

Re: Families First Coronavirus Response Act

This afternoon, the U.S. Senate passed, without amendment, the final version of the House of Representatives' *Families First Coronavirus Response Act* (the "Act"). The Act, which the President signed this evening, will require significant changes to your policies for dealing with employees who need or want time off from work during the Pandemic.

The provisions of the Act that are most relevant for employers are the (1) *Emergency Family and Medical Leave Act*, an amendment to the federal *Family and Medical Leave Act* ("FMLA"), and (2) the *Emergency Paid Sick Leave Act*.

The following is a summary of the key aspects of the Act:

### (1) Emergency Family and Medical Leave Act

**Covered Employers:** Any employer with fewer than 500 employees, including employers with fewer than 50 employees to which FMLA does not otherwise apply.

**Eligible Employees:** Any employee employed for a minimum of 30 calendar days.

**Amount of Leave:** Twelve (12) weeks of job protected leave with continuation of health insurance benefits.

**Reasons for Leave: Qualifying Need Related to Public Health Emergency:** The term *qualifying need related to a public health emergency*, means the employee is unable to work (or telework) due to the employee's need to care for their children because the school or place of care has been closed, or the child care provider is unavailable due to a public health emergency.

**Exemptions:** The Secretary of Labor will have the right under the law to issue regulations exempting from the Emergency FMLA provisions, *health care providers* and **businesses with fewer than 50 employees** when the imposition of such requirements would jeopardize the viability of the business as an ongoing concern. Those regulations have not yet been published.

**Compensation:** The **first 10 days** of Emergency FMLA will be unpaid (but see *Emergency Paid Sick Time* below). Employees may use their PTO for those first 10 days, but employers cannot require it. After 10 days, employers will be required to pay employees on leave **no less than two-thirds of their regular weekly pay for the hours that they would regularly work**. There is a formula for employees whose hours vary each week. **There is a \$200.00 per day cap up to an aggregate of \$10,000 for each employee during the 10 weeks. See Funding below.**

**Restoration to Position:** This provision **does not apply to employers with fewer than 25 employees.** Otherwise, for any employee who takes FMLA under this Emergency FMLA law, the following return to work rules apply:

- If the position no longer exists due to economic conditions or other changes resulting from the virus, the employer must make reasonable efforts to restore the employee to a comparable position (equal pay and benefits);
- If those reasonable efforts do not succeed, the employer must make reasonable efforts to contact that employee if a comparable position becomes available for up to 1 year from the earlier of the end of the “qualifying need” or 12 weeks from the start of the leave;

## (2) **Emergency Paid Sick Leave Act**

**Covered Employers:** Any employer with fewer than 500 employees

**Eligible Employees and Availability of Benefit:** The paid sick time will be immediately available for use by any employee regardless of length of employment.

**Basis for Paid Sick Time:** Employee **unable to work or telework** because employee is:

- (1) Subjected to quarantine order
- (2) Advised by health care provider to isolate
- (3) Experiencing symptoms of virus and seeking diagnosis
- (4) Caring for someone who is under an order to quarantine or has been advised to isolate
- (5) Caring for child due to school or daycare closure
- (6) Experiencing any other circumstance designated by federal agencies that allow use of this benefit

***\*\*\* Except that 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 this subsection.***

### **Amount of Paid Sick Time Granted**

- **Full-time employees**-80 hours
- **Part-time employees**-the average number of hours the employee works over a 2 week period
- No carry over and the availability of this time ends when the reasons for it described above end. The law sunsets on December 31, 2020

### **Compensation:**

Employees will receive **their regular rate of pay** up to a maximum of \$511.00 per day with an aggregate of \$5,110.00, if using Paid Sick Leave because the employee is:

- Subjected to quarantine order
- Advised by health care provider to isolate
- Experiencing symptoms of virus and seeking diagnosis

Employees will receive **two-thirds of their regular rate of pay** up to a maximum of \$200.00 per day with an aggregate of \$2,000.00, if using Paid Sick Leave because the employee is:

- Caring for someone who is ordered to quarantine or been advised to isolate
- Caring for child due to school or daycare closure
- Experiencing any other circumstance designed by federal agencies that allow use of this benefit

**Sequencing:** The hours provided under this law are in addition to any other PTO, including other earned sick leave required by law. Employees *may* first use the paid sick time under this law for the reasons identified above. Employers *may not* require employees to use any other paid leave before the leave provided in this law.

**Notice Posting:** The DOL will issue a model notice with the details of the law which employers must post in the usual places.

**Regulations:** The Secretary of Labor has the authority to issue regulations excluding health care providers and emergency responders from the definition of “employee” and to exempt businesses with fewer than 50 employees *when the imposition of such requirements would jeopardize the viability of the business as a going concern.*

### **Provisions Related to Both Laws**

**Funding Source:** Funding for the compensation payable by employers to employees under the *Emergency Family and Medical Leave Act* and the *Emergency Paid Sick Leave Act* will come from tax credits that employers will be permitted to take against the employer portion of Social Security taxes. Any shortfall will be reimbursed by the Treasury.

**Effective Date:** Employers must comply with these laws in fifteen (15) days from today.