

THOUGHT LEADERSHIP

News

The New FMLA and Paid Sick Leave Laws

Newsbrief

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As you know, the U.S. House of Representatives recently passed a bill providing for paid sick leave and expanded FMLA coverage. That bill became law last night and has two key provisions for employers, the Emergency Family and Medical Leave Act (Emergency FMLA) and the Emergency Paid Sick Leave Act (PSLA).

Here are some key takeaways:

1. They go into effect April 2, 2020. Layoffs and other terminations occurring prior to then won't be affected by these two laws, although other existing laws such as the WARN Act, potentially do.
2. They apply only to employers with less than 500 employees.
3. The PSLA applies to all employees and the Emergency FMLA applies to all employees who have been on the payroll for 30 days or more.
4. In general, the PSLA provides 2 weeks (80 hours) of paid sick leave. It kicks in for just about any reason related to COVID-19, including quarantines or experiencing symptoms, as well as the care of someone subject to the above, or the care of a child whose school is closed. The maximum benefit is \$511/day (total of \$5,110) for self-care and \$200/day (total of \$2,000) for care for others or school closures.
5. In general, the Emergency FMLA provides 12 weeks of job-protected leave when an employee cannot work due to the need to care for a child whose school or child care was closed. The first two weeks are unpaid, although the employee can take PTO/vacation/sick leave. The next ten weeks are to be paid at 2/3 of the employee's regular rate of pay. Maximum benefits are \$200/day and \$10,000 in total. Employees must be restored at the conclusion of their leave, with a carve-out for employers with less than 25 employees if the position no longer exists due to economic conditions. Also, the DOL has the discretion to exempt small businesses (employers with less than 50 employees) from this statute.
6. A poster for the PSLA will be issued by DOL in the next 7 days and you must post it once issued.
7. There are private causes of action for violations of the both the Emergency FMLA and the PSLA. The PSLA is actionable under the FLSA. Employers with less than 50 employees are not subject to civil damages under the Emergency FMLA.
8. Employers will receive tax credits for any payments made under these acts.

9. Both acts sunset on December 31, 2020.

Please call Mr. Wisdom at (713) 632-1795 if you have any questions or wish to discuss. Thanks, Jack, Elizabeth and Jim.