

Update on Employers' Emergency Paid Sick Leave and Coronavirus

President Trump signed the Families First Coronavirus Response Act (the "FFCRA") into law on March 18, 2020. Included in the FFCRA is the Emergency Sick Leave Act ("Sick Leave Act"). This law covers all public sector employers and, with limited exceptions, all private sector employers with fewer than 500 employees. The US Department of Labor ("DOL") has recently confirmed that the new law takes effect on April 1, 2020 – not April 2, as previously understood.

The Sick Leave Act provides an employee of a covered employer with up to 80-hours of paid sick leave for certain reasons related to coronavirus, with the federal government reimbursing employers for these payments through tax credits at a later date. One of these reasons for payment eligibility is if the employee is unable to work or telework because he or she "is subject to a Federal, State, or local quarantine or isolation order related to COVID-19."

On March 24, 2020, Governor Whitmer issued Executive Order No. 2020-21 (the "Order"). The Order, with limited exceptions, requires residents to remain at home to the maximum extent feasible from March 24 through April 13. The Order specifically prohibits an employer from requiring workers to leave their homes unless the worker is necessary to sustain or protect life or to conduct minimum basic operations. On its face, it would seem the Governor's Order will trigger the quarantine or isolation provision of the Sick Leave Act on April 1 and continuing through April 13. Importantly, however, there is no guidance at either the state or federal level definitively answering whether the Governor's Order actually constitutes a "quarantine or isolation order" as those terms are used in the Sick Leave Act. The reason for the uncertainty is that the Governor's Order does not go so far as to completely quarantine or completely isolate anyone. Rather, the Governor's Order might be more properly characterized as a "stay-at-home" order; i.e., a less restrictive standard which might not trigger the Sick Leave Act.

The DOL is charged with issuing regulations and other guidance concerning the application and interpretation of the FFCRA. To date, the DOL has not issued guidance addressing whether a "stay at home" proclamation (like Governor Whitmer's Order) is a "quarantine or isolation order" making employees eligible for paid sick leave. Given this uncertainty, employers are advised to consider a more fiscally conservative approach and decline to award paid leave based on work loss caused by the Order alone. If the Governor's Order does not rise to the level of a "quarantine or isolation order" under the Sick Leave Act, an employer might not be eligible for the tax credits otherwise available to compensate an employer for providing paid leave under the Sick Leave Act.

Fortunately, the FFCRA contains a clause which prohibits enforcement actions against employers for 30-days, so long as they are making good faith efforts to comply with the law. In light of the uncertainty explained above, an employer would presumably act in good faith by waiting for clarification from the DOL as to whether a stay-at-home mandate such as the Order qualifies as a "quarantine or isolation order" for purposes of the Sick Leave Act, before granting paid leave time.

Masud Labor Law Group is closely following the developments associated with these laws and will continue to provide updates. Of course, if you have any specific questions, please do not hesitate to reach out to us.



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