

FAMILIES FIRST CORONAVIRUS RESPONSE ACT
(GENERAL OVERVIEW & ANALYSIS)

From: Levy Phillips

To: Clients

Date: March 24, 2020

On March 18, 2020, the Families First Coronavirus Response Act ("CV Bill") was signed into law. At that time, we gave you an initial overview of the legislation. Over the past few days, the federal government has released clarifying information about the law. We have updated our guidance in light of this new information.

The CV Bill has several parts that impact your members and which you need to know. To begin with, the CV Bill is broken out into several sub-components. There are, of course, provisions for funding testing, medical supplies, *etc.*

Next, the CV Bill provides for important benefits to all employees. These are:

1. Enhanced Unemployment Benefits

The CV Bill requires and funds additional/supplemental Unemployment benefits. There are no earmarks for special industries, workers, *etc.* The idea is to get everyone out of work due to Coronavirus onto UI so they have money. To this end, California has waived the one-week waiting period for those unemployed or disabled because of the Coronavirus. We expect more detail and additional Unemployment benefits to be provided shortly in subsequent legislation.

2. Enhanced FMLA Leave Rights

The CV Bill provides paid FMLA leave to certain employees. The key features of the law are as follows:

Covered Employers. The law applies to private employers with fewer than 500 employees and public employers of any size.

Covered Employees. Currently, the law only covers one specific class of employees: those who are unable to work because they need to care for a child whose school or place of care is closed, or whose childcare provider is unavailable, due to the

Coronavirus. It does not extend paid FMLA leave to any other Coronavirus-related events.

Length of Service Requirement. Employees must have been employed for at least 30 days to qualify for FMLA benefits under the law.

Level of Benefits. Employees who meet the above eligibility requirements are entitled to 12 weeks of FMLA leave. The first two weeks are unpaid, but employees may elect to use accrued paid leave to cover some or all of the two-week period. In addition, employees who also qualify for federal paid sick leave (discussed below) may use that paid leave to cover the first two weeks of unpaid FMLA. For the remaining 10 weeks, employees are paid at 2/3 their regular rate of pay, subject to a cap of \$200 per day and \$10,000 in the aggregate per employee.

Part-Time Employees. Generally, part-time employees are paid based on the number of hours they normally work per week. For instance, an employee who normally works 30 hours a week will receive 30 hours of pay per week (at 2/3 of her/his regular rate of pay).

Multi-Employer Collective Bargaining Agreements. Employers who are signatories to multi-employer CBAs may make the required FMLA payments to a governing multiemployer health and welfare fund. The fund, in turn, remits the required payments to employees.

Exemptions. Health care providers and emergency responders are exempt from the enhanced FMLA leave law. In addition, employers with less than 50 employees may be granted a hardship exemption by the DOL if the enhanced leave requirements would jeopardize the viability of their business.

Job Restoration Following Leave. Employers with more than 25 employees must return employees to the same or equivalent position. Employers with fewer than 25 employees must make reasonable attempts to return the employee to the same or equivalent position but are not required to do so *if* the employee's position no longer exists due to an economic downturn or other circumstances caused by the Coronavirus. If an employee is not returned to work for one of these reasons, the employer must make reasonable efforts to return the employee to work for a period of one year following the employee's leave.

Effective Date and Expiration. The law is effective from April 2, 2020 to December 31, 2020.

3. Emergency Paid Sick Leave Act

The CV Bill also extends federal paid sick leave (PSL) benefits to employees who are unable to work due to Coronavirus-related reasons. The PSL law covers a broader group of employees than the FMLA leave law discussed above. The key features are as follows:

Covered Employers. The PSL law applies to private employers with fewer than 500 employees and public employers of any size.

Covered Employees. An employee is eligible for PSL benefits if she/he cannot report to work for any of the following reasons:

- A. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19;
- B. The employee is advised by health care provider to quarantine;
- C. The employee is experiencing COVID-19 symptoms and seeking a diagnosis;
- D. The employee is caring for an individual (not just family members) subject to a federal, state or local isolation order, or advised by a health care provider to self-quarantine;
- E. The employee is caring for her/his child if the child's school or place of care is closed or the child care provider is unavailable due to Coronavirus concerns;
or
- F. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services (these conditions have not yet been specified).

Level of Benefits. Full-time employees are entitled to **10 days** (80 hours) of paid sick leave. The level of benefits depends on the reason for the leave. Employees who take leave to care for themselves or because they are subject to a quarantine order (items A, B, and C, above) receive 100% of their regular rate of pay, subject to a cap of \$511 per day (and \$5,110 in the aggregate). Employees who take leave to care for someone else (items D, E, and F, above) receive 2/3 their regular rate of pay, subject to a cap of \$200 per day (and \$2,000 in the aggregate).

No Length of Service Requirement. Unlike the FMLA leave law, there is no length of service requirement for paid sick leave. Employees are entitled to PSL benefits no matter how long they have worked for the employer.

Part-Time Employees. Generally, the amount of paid sick leave for part-time employees is equal to the number of hours worked, on average, over a two-week period. For instance, a part-time employee who works an average of 60 hours every two weeks is entitled to 60 hours of paid sick leave.

Multi-Employer Collective Bargaining Agreements. As with the FMLA law, employers who are signatories to multi-employer CBAs may make the required sick leave payments to a governing multiemployer health and welfare fund. The fund, in turn, remits the required payments to employees.

Exemptions. Health care providers and emergency responders are exempt from the PSL law. In addition, employers with less than 50 employees may be granted a hardship exemption by the DOL if the PSL requirements would jeopardize the viability of their business.

Effective Date. The PSL law takes effect on April 2, 2020. Currently, there is no expiration date.

4. Funding of Benefits.

Employers are entitled to a refundable tax credit to cover the cost of providing legally required PSL and FMLA leave benefits to employees

5. Effects Bargaining and Related Issues.

No doubt, there will be many questions that arise from implementing the CV Bill. Among these are such issues as coordinating the new FMLA/PSL requirements with those set forth in your union's CBAs; whether these new paid leave requirements also mandate the continued payment of benefit contributions; what role the Union can play in getting critical information about governmental benefits to your members, *etc.* Additionally, the CV Bill appears to adopt FLSA tests for who is an "employer," so we can expect litigation and wrangling over that issue.

Finally, it is important to note that the FMLA and sick leave provisions in the CV Bill are a "floor." Anything in your collective bargaining agreement that provides for a better benefit or anything you can achieve in emergency bargaining that surpasses what is here would take precedence.

We stand in unity with our Union Brothers & Sisters during this trying time and are available to answer any questions you have.

