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IMPORTANT CHANGES TO EMPLOYMENT LAWS REGARDING PAID SICK LEAVE UNDER FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act. Among other provisions, this law requires all public employers and private employers with fewer than 500 employees to provide emergency paid sick leave and extended paid caregiver leave to employees who are absent from work for reasons related to the Coronavirus. The law is effective beginning on April 2, 2020 and will expire on December 31, 2020.

A summary of the major requirements of the law relating to employers follows.

EMERGENCY PAID SICK LEAVE

All current employees, including part-time employees, are entitled to emergency paid sick leave if the employee is unable to work (or work from home) for any of the following Coronavirus related reasons:

1. Employee is subject to a self-isolation or quarantine order from a federal, state or local government.
2. Employee has been advised by a health care provider to self-quarantine.
3. Employee has Coronavirus symptoms and is seeking a medical diagnosis.
4. Employee is caring for someone in 1 or 2 above.
5. Employee is caring for a child whose school or daycare is closed or whose childcare provider is not available due to Coronavirus precautions.
6. Employee is experiencing similar conditions as specified by Secretary of Health and Human Services.

Emergency Paid Sick Leave for Reasons 1-3 above: Full-time employees are entitled to up to 80 hours of paid leave at their regular rate of pay for leave taken for reasons 1 through 3 above. Part-time employees are entitled to paid leave equal to the hours that they would ordinarily work in a two-week period (e.g., a part-time employee who normally works 20 hours a week would be entitled to a total of up to 40 hours of paid leave). The paid leave entitlement is capped at \$511 per day and \$5,110 in the aggregate.

Emergency Paid Sick Leave for Reasons 4-6 above: Employees are entitled to two-thirds of their regular rate of pay for leave taken for reasons 4 through 6 above. This paid leave entitlement is capped at \$200 per day and \$2,000 in the aggregate.

Emergency paid sick leave under the law is in addition to, and not in substitution for, any PTO already provided by an employer. Also, an employer cannot require an employee to exhaust existing PTO before taking emergency paid sick leave. Therefore, the employee is entitled to take the

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emergency paid sick leave before using any other PTO already provided by an employer. There is, however, no prohibition on coordinating emergency paid sick leave and existing PTO. For example, an employer may allow employees taking qualified emergency paid sick leave (at two-thirds pay) to use existing PTO to obtain full wage replacement. An employee is not entitled to carry over emergency paid sick leave from year to year and is not entitled to a payout of unused emergency paid sick leave upon termination or upon expiration of this benefit at the end of this year.

An employer is prohibited from retaliating against an employee for taking emergency paid sick leave and the failure to provide paid leave under the law is treated as a minimum wage violation.

FMLA CAREGIVER PAID LEAVE

The Families First Coronavirus Response Act also provides a paid FMLA benefit to employees who are unable to work (or work from home) for only reason #5 above (i.e., to care for a child whose school or daycare is closed or childcare provider is not available due to Coronavirus precautions). An employer must provide paid FMLA caregiver leave to each such employee for each day of leave that the employee takes after taking leave for 10 days. An employee must have worked at least 30 days with the employer in order to be entitled to FMLA caregiver paid leave.

The FMLA caregiver paid leave is designed to be coordinated with emergency paid sick leave. At the employee's option, the employee may take the first 10 days as unpaid leave (so that the employee can use emergency paid sick leave for that time). After the first 10 days, an employee is entitled to FMLA caregiver paid leave at two-thirds of the employee's regular rate of pay for up to 10 additional weeks of leave. This benefit cannot exceed \$200 per day or \$10,000 in the aggregate.

EXEMPTION FOR HEALTH CARE PROVIDERS AND EMERGENCY RESPONDERS; ADDITIONAL EXEMPTIONS; NOTICE REQUIREMENT

Employers of health care providers and emergency responders can elect not to provide emergency paid sick leave or FMLA caregiver paid leave for these two classes of employees. The Department of Labor has been given authority to issue regulations providing further clarification and exemptions if warranted, including an exemption for employers with fewer than 50 employees if the benefit would jeopardize their viability as a going concern. The Department of Labor also will be issuing a form of the notice employers are required to post that describes the law's requirements.

EMPLOYER TAX CREDIT

Subject to the specific conditions of forthcoming Treasury Department regulations, 100% of the emergency paid sick leave and paid FMLA leave (up to the caps set forth above) are refundable via payroll tax credits.

NOTE THAT THIS LAW DOES NOT REQUIRE EMPLOYERS TO PAY IN THE EVENT OF LAYOFF/FURLOUGH, BUT OTHER LAWS MAY

This law does not address payment to employees in the event of a temporary layoff or furlough. At the current time, employees should file for unemployment benefits if they lose work due to the Coronavirus. Prior to implementing any furlough, layoff or reduction in force, employers should take care to ensure that compliance with all federal, state and local laws is observed, including but not limited to antidiscrimination laws, the federal WARN Act, any state WARN Acts, federal COBRA and

any state healthcare continuation coverage requirements and laws relating to payment of wages and accrued vacation upon employment termination. Employers should also review and abide by the terms of their own separation pay policies, as well as applicable collective bargaining agreements in the case of unionized workforces.

We recommend that employers take steps now to include these new paid leave requirements into their existing PTO policies. We also recommend that employers seek legal advice regarding their particular facts and circumstances prior to implementing any furloughs, layoffs or reductions in force. BSW is available to assist employers with the implementation of these new legal requirements. If you would like our assistance or have any other questions regarding these matters, please contact:

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Below is a link to the full text of the Families First Coronavirus Response Act. The Emergency Paid Sick Leave Act is in Division E.

<https://www.congress.gov/bill/116th-congress/house-bill/6201/text>