



# BUSINESS ISSUES CONCERNING CORONAVIRUS

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# INFORMATION ON A RAPIDLY CHANGING SITUATION

The information provided in this presentation provides a general overview of a developing situation and is publicly available information for individuals, businesses, employers, and employees to use to make an informed decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

# FIRST AND FOREMOST: SAFETY

[Prevention of COVID-19](#)

[Symptoms of COVID-19](#)

[What To Do If You Are Sick](#)

[Texas COVID-19 Testing Information](#)

[How to Prepare and Protect Your Family](#)

[Keeping Your Business and Home Safe](#)

[Resources for Businesses and Employers](#)

[COVID-19 Case Counts for Texas](#)

[COVID-19 Case Counts for the United States](#)

# LEADERSHIP IN TIMES OF CRISIS

- PLANNING
  - TELEWORKING
  - DATA ACCESS POLICIES
    - MAINTAINING COMPUTER/NETWORK SECURITY
  - WRITE IT DOWN
  - INVOLVE ALL OWNERS/MANAGERS
  - PLAN IS A WORK IN PROGRESS
- COMMUNICATE THE PLAN
- EXECUTE THE PLAN

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- Signed into law on March 18; Takes effect April 1, 2020 and expires December 31, 2020
1. **Emergency Family and Medical Leave Expansion Act**
    - Significantly amends and expands FMLA on a temporary basis
    - Changes threshold coverage from only employers with 50 or more employees to employers with fewer than 500 employees
    - Any employee who has worked for at least 30 days prior to designated leave may be eligible to receive paid family and medical leave for up to 12 weeks
    - Allows Secretary of Labor to issue regulations exempting small businesses with fewer than 50 employees if imposing FMLA expansion would jeopardize the viability of their business

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## Paid sick leave:

- After first 10 days of unpaid leave, employees are paid at two-thirds of regular rate
- Employees may use accrued personal or sick leave during first 10 days
- Payments made to employees for sick leave are capped at \$200/day and \$10,000 aggregate per employee
- Part-time employees are to be paid based on average number of hours worked for six months prior to taking Emergency FMLA
- Part-time employees less than six months: the “reasonable expectation at hiring of the average number of hours normally scheduled to work

## What is a “Qualifying Need Related to Public Health Emergency”?

- If, due to COVID-19, the employee is unable to work (or telework) due to a need to leave to care for their child under 18 years of age if the school or place of care has been closed or childcare provider is unavailable

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## Job Restoration:

- Employers with 25 or more employees have same obligation as under traditional FMLA to return employee taking Emergency FMLA to the same or equivalent position on return
- Employers with less than 25 employees are generally excluded if the position no longer exists following Emergency FMLA leave due to economic downturn or other circumstances caused by a public health emergency during the Emergency FMLA period
- BUT: Subject to making reasonable attempts to return employee to an equivalent position for up to a year following the employee's leave

## Exemptions:

1. Employers of employees who are healthcare providers or emergency responders may elect to exclude employees (“healthcare provider” and “emergency responder” is not defined)
2. Secretary of Labor may exempt businesses with fewer than 50 employees from the Emergency Leave Act “when the imposition of such requirements would jeopardize the viability of the business as a going concern”

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## Tax Credits:

- Each quarter, employers subject to this requirement are entitled to a fully refundable tax credit equal to 100 percent of the qualified FMLA wages paid



# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## 2. Emergency Paid Sick Leave Act

- Applies to employers with fewer than 500 employees
- Requires employers to provide full-time employees with 10 days (80 hours) of paid sick leave when the employee can't work or telework for circumstances related to COVID-19
- Part-time employees are entitled to the number of hours of paid sick time equal to the number of hours they work on average, over a two-week period

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Intended for employees to use when they cannot work or telework because they:

- Are subject to a government quarantine or isolation order related to COVID-19
- Have been advised by healthcare providers to self-quarantine due to COVID-19
- Are experiencing symptoms of COVID-19 and seeking a medical diagnosis
- Are caring for an individual subject to a quarantine order or self-quarantine
- Are caring for children if schools are closed or caregivers unavailable because of a public health emergency or
- Are experiencing “any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor”

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Who is eligible: All employees, regardless of length of employment

Rate of Pay: Employees must be compensated for any paid sick time taken at the higher of 1) their regular rate of pay, 2) the federal minimum wage, or 3) the local minimum wage

- Payments are capped at \$511 per day and \$5,110 in the aggregate
- Employees absent to care for a sick family member or child unable to attend school are compensated at two-thirds of the rate they would otherwise receive, capped at \$200 per day and \$2,000 in the aggregate

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Existing Leave Policies? Paid sick leave under Emergency FMLA is in addition to whatever sick leave is already offered by employers

- Employer may not require an employee to use other paid leave before using paid sick time under Emergency FMLA
- Nothing prohibits employers from changing their leave programs after the law goes into effect

Rate of Pay: Employees must be compensated for any paid sick time taken at the higher of 1) their regular rate of pay, 2) the federal minimum wage, or 3) the local minimum wage

- Payments are capped at \$511 per day and \$5,110 in the aggregate
- Employees absent to care for a sick family member or child unable to attend school are compensated at two-thirds of the rate they would otherwise receive, capped at \$200 per day and \$2,000 in the aggregate

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Tax credits: Each quarter, employers subject to the Emergency Paid Sick Leave Act are entitled to a fully refundable tax credit equal to 100 percent of the qualified paid sick leave wages paid by the employer

## Exemptions:

1. Employers of employees who are healthcare providers or emergency responders may elect to exclude such employees from eligibility for paid leave (no definition of “healthcare provider” or “emergency responder”)
2. Secretary of Labor may exempt businesses with fewer than 50 employees from the Emergency Leave Act “when the imposition of such requirements would jeopardize the viability of the business as a going concern”

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## Department of Labor – Wage and Hour Division Guidelines on FFCRA

- Document why business with fewer than 50 employees meets criteria for exemption
- Exemptions will be addressed in more detail in forthcoming regulations

## New Poster for Employee Rights Under FFCRA

Enforcement Guidance – March 24, 2020 letter from Wage and Hour Division of Department of Labor:

- Temporary period of non-enforcement from March 18 to April 17, provided that an employer has made reasonable, good faith efforts to comply with the Act
- If an employer violates the FFCRA, he acts reasonably and in good faith if:
  1. Employer remedies the violations and makes all affected employees whole as soon as practicable;
  2. Violations were not willful; and
  3. Department of Labor receives a written commitment from the employer to comply with the Act in the future

# WORKPLACE SAFETY

## OSHA Guidance on Preparing Workplaces for COVID-19

- Develop plans
- No specific OSHA standard covering COVID-19
- Follow existing OSHA standards:
  1. Personal Protective Equipment Standards – require using gloves, eye and face protection, and respiratory protection
  2. General Duty Clause – Requires employers to furnish to each worker “employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm

# EMPLOYMENT ISSUES

## Texas Workforce Commission FAQ for Texas Employers

- Unemployment benefits questions
- Information on Shared Work Program – allows partial unemployment benefits for employees whose hours are reduced by an amount between 10 and 40 percent
- Information on sick leave vs. unemployment
- What to do regarding employees who are or may be sick

## Mass Claims program for Unemployment Benefits

## COVID-19 Resources for Employees



# CONTRACTS/INSURANCE

- Review contracts
  - Impossibility of performance due to COVID-19?
  - Force majeure/Act of God provisions?
- Review insurance policies
  - Business interruption insurance?
  - Workers' compensation insurance?

# CASH FLOW/BANKING ISSUES

- Reach out to your lender/landlord/creditor sooner rather than later
  - All eviction trials or hearings are tolled until after April 19, 2020
  - Writs of possession may issue, but no posting until after April 26, 2020
  - New filings may be accepted, but issuance and service of citation may not occur until after April 19, 2020
  - BUT: Eviction case can proceed if court determines that tenant poses an imminent threat of 1) physical harm to the plaintiff, employees, or other tenants, or 2) criminal activity, and 3) the Court signs an order stating procedures for the case to proceed
- Discuss solutions with lenders/creditors
  - Short term needs
  - Long term needs
- Small Business Administration Economic Injury Disaster Loan Program