

# Governmental Responses to COVID-19 with Significant Implications for Employers: Federal Coronavirus Response Act and Partial Suspension of California WARN Act

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March 19, 2020

The federal governmental response to the COVID-19 pandemic ramped up on March 18 as President Trump signed into law the Families First Coronavirus Response Act (the Act). This Sidley Update summarizes certain key provisions of the Act in the areas of employment, benefits and tax law. In addition, California employers may be affected by partial suspension of the California Worker Adjustment and Retraining Notification (WARN) Act, described below. For more detailed information, [see here](#), or contact the Sidley lawyers identified below.

## **Significant Provisions of the Families First Coronavirus Response Act**

### *Employment Law: Paid Leave*

**Paid Sick Leave.** The Act creates a new requirement that employers with fewer than 500 employees provide each employee with two weeks' paid sick leave to address COVID-19-related absences. Paid sick leave must be provided if (1) the employee must stay home because he or she has or is suspected of having COVID-19 or is subject to a quarantine or isolation order; or (2) the employee must stay home to care for an individual who is quarantined related to COVID-19 or a child whose school or other source of child care is unavailable due to COVID-19.

If the employee uses paid sick leave because he or she is quarantined or has or is suspected of having COVID-19, the employee must be paid the greater of the employee's regular rate of pay or minimum wage, with a daily maximum of \$511 and an aggregate maximum of \$5,110. If the employee takes paid sick leave to care for another individual, the required pay rate is two-thirds of the greater of the employee's ordinary pay rate or minimum wage, with a daily maximum of \$200 and an aggregate maximum of \$2,000.

**FMLA Paid Leave.** The Act also amends the FMLA to create a new paid leave requirement for certain employees caring for a child whose school or other source of child care is unavailable due to COVID-19. For the first 10 days of such leave, the employee is entitled to paid sick leave as described above. For the next 10 weeks of FMLA leave, the employer must provide paid leave of at least two-thirds the employee's normal rate of pay, up to a daily maximum of \$200 and an aggregate maximum of \$10,000.

The above provisions expire at the end of 2020.

### *Benefits: COVID-19 Testing*

The Act requires group health plans and health insurers offering group or individual health coverage to provide coverage, with no deductibles, copayments, coinsurance or pre-authorization for (a) approved diagnostic products for the detection of COVID-19, and (b) items and services furnished during medical visits (both in person and telehealth) that result in diagnostic testing.

The Act also generally requires coverage for certain COVID-19 testing and waives cost sharing for the testing (and related provider visits) for specified governmental arrangements, such as Medicare Part B, a Medicare Advantage plan, Medicaid, the Children's Health Insurance Program and TRICARE, and as related to coverage for veterans, federal civil service workers, and American Indians and Alaskan Natives receiving coverage through the Indian Health Service.

### Tax: Employment Tax Credits

The Act provides employers required to pay wages pursuant to the Act's paid sick leave and FMLA provisions with tax credits for amounts paid pursuant to those provisions and, in some cases, for a portion of amounts paid or incurred to provide group health coverage to their employees.

The credit for wages paid to an employee under the Act's paid sick leave provisions is capped at the \$511/\$200 per day maximums and \$5,110/\$2,000 aggregate maximums described above. The credit for wages paid to an employee pursuant to the Act's FMLA paid leave amendments is capped at the \$200 per day maximum and the \$10,000 aggregate maximum described above. Each of these credits is increased by certain amounts paid or incurred by the employer to provide and maintain a group health plan as are properly allocable to the paid sick leave or FMLA paid leave payments.

### **Partial Suspension of the California WARN Act**

On March 17, the Governor of California signed an Executive Order to suspend portions of the California WARN Act. Specifically, the Order suspends the usual 60-day notice requirement for mass layoffs and plant closures that would otherwise be covered by the state WARN Act. Instead, employers must provide WARN notice as soon as practicable to employees and the requisite government officials. The notice must briefly state the basis for reducing the notification period, i.e., COVID-19, and provide information about Unemployment Insurance Benefits available to employees in California. The Executive Order is particularly important for employers with California operations because, unlike the federal and other state WARN Acts, California's Act is triggered by *temporary* layoffs as well as those lasting over six months.

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The government response to COVID-19 is rapidly evolving, and we will continue to provide updates as new actions are taken.

If you have any questions about these government actions, or would like to discuss how these actions apply to your company in particular circumstances, please contact the Sidley lawyer with whom you usually work, or:

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