

Labor and Employment Alert: Next Batter Up: Now the Feds Take Their Swing at Helping Employers and Employees

Yesterday we wrote about the State of New Jersey. Now the Federal legislature took its swing at quelling an unprecedented situation for employers and employees.

Last night, the President signed into law the Family First Coronavirus Response Act (known as HR 6201). The new law, effective in 15 days:

- Enacts the Emergency Family and Medical Leave Act. Employers with less than 500 employees are required to provide up to 12 weeks of leave to employees under this amendment to the Federal Family Medical Leave Act ("FMLA"). Specifically, there is a new leave entitlement under the FMLA for employees who have been employed for at least 30 calendar days and who are seeking leave because they are unable to work (or telework) due to the need to care for the son or daughter whose school or place of care has been closed, or the child care provider is unavailable due to a public health emergency with respect to COVID-19 declared by a Federal, state, or local authority.
 - Employers of healthcare providers or emergency responders may exclude these employees from this new leave entitlement.
 - The Secretary of Labor may also exempt businesses with fewer than 50 employees when such leave would jeopardize the viability of the business as a going concern.
 - The first ten days of this new leave category may be unpaid except that the employee may elect to substitute any accrued vacation, personal, medical, or sick leave in place of the unpaid leave. For all subsequent days, the employer must provide paid leave equal to at least two-thirds of the employee's regular rate of pay, not to exceed \$200/day and \$10,000 in the aggregate.
 - For employers with less than 25 employees, reinstatement will not be required if the position no longer exists due to economic conditions of the employer caused by a public health emergency, and the employer makes reasonable efforts to restore the employee to an equivalent position.
- Enacts the Emergency Paid Sick Leave Act. This is a new federal emergency paid leave benefits program similar to what many states (including New Jersey and New York) enacted over the past few years. Employers must provide paid sick time to the extent the employee is unable to work (or telework) due to a need for leave because the employee:
 1. Is subject to quarantine or isolation order related to Coronavirus;
 2. Has been advised by a healthcare provider to self-quarantine due to concerns related to Coronavirus;
 3. Is experiencing symptoms related to Coronavirus and is seeking medical diagnosis;
 4. Is caring for an individual who is subject to a quarantine or isolation order or who has been advised by a healthcare provider to self-quarantine;
 5. Is caring for a son or daughter if their school or place of care has been closed, or the child care provider is unavailable due to Coronavirus; or
 6. Is experiencing any substantially similar condition specified by the Secretary of Labor.
- There shall be 80 hours of paid sick time for full-time employees, and, for part-time employees, the average hours worked over a two week period. The paid sick time shall not exceed \$511/day and \$5,110 in the aggregate when the leave is for any of (1), (2) or (3) above; or \$200/day and \$2,000 in the aggregate when the leave is for any of (4), (5) or

(6) above.

- Employers of healthcare providers or emergency responders may exclude these employees from this new leave entitlement
- Employers may not require the use of other paid leave before the use of paid sick time.
- It shall be unlawful to discharge, discipline, or otherwise discriminate against any employee who takes leave under this new act.
- The Secretary of Labor may also exempt businesses with fewer than 50 employees when such leave would jeopardize the viability of the business as a going concern
- Provides tax credits for the paid sick leave and paid family leave mandates placed on employers
 - Employers would receive a tax credit equal to all paid sick leave wages and paid family medical leave wages against the 6.2% social security tax and the 1.45% Medicare tax on wages paid by the employer as to all employees, refundable in some instances, with some limits based upon the reason for the employee's leave
- Enacts the Emergency Unemployment Insurance Stabilization and Access Act. This expands unemployment benefits and provide grants to states to process and pay claims.
- Requires employers to provide additional protections for healthcare workers. Specifically, OSHA (Occupational Safety and Health Administration) would be required to issue a temporary standard requiring employers to develop and implement a comprehensive infectious disease exposure control plan to protect healthcare workers.

Do not be shy! If you have any questions about this alert, or any other labor and employment issue, please contact:

Anthony Rainone, Member, Labor and Employment Practice, at arainone@bracheichler.com or 973-364-8372

Matthew Collins, Member and Chair, Labor and Employment Practice, at mcollins@bracheichler.com or 973-403-3151