

Significant Employment Related Provisions of the Second Federal Stimulus Legislation, and New City of Pittsburgh Paid Leave Ordinance

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The Second Federal Stimulus

The second stimulus package passed by Congress in late December 2020 is over 5000 pages long. Among other things, it contains provisions relating to the availability and amount of unemployment compensation for out of work employees, as well as many tax related provisions. However, for employers, second stimulus package is most remarkable for what it does not contain.

First, despite much public discourse on the topic, it contains no protections from liability for employers or businesses.

Second, as explained more fully below, the second stimulus package did not create any new COVID-19 related paid leave provisions, leaving the paid leave programs required in 2020 to expire December 31, 2020.

The Expiration of FFCRA Mandatory Paid Leave Requirements, and The Opportunity to Continue the FFCRA Programs until March 31, 2021

By way of background, the first federal stimulus legislation in response to COVID-19, titled the Families First Coronavirus Response Act ("FFCRA"), was signed into law by President Trump on March 18, 2020. FFCRA was effective on April 1, 2020 and contained a broad array of relief that significantly impacted small and mid-size employers.

Of particular impact for employers were the FFCRA's required COVID-19 paid leave requirements. FFCRA created the right to two types of paid leave: a temporary, limited expansion of the Family & Medical Leave Act of 1993 ("the FMLA expansion"); and emergency paid sick leave. With respect to these paid leave provisions, FFCRA applied only to employers with fewer than 500 employees and most public agencies with greater than one employee. However, under the express terms of the FFCRA, these paid leave provisions were designed to expire on December 31, 2020.

When the second federal stimulus package was being negotiated, there was significant speculation as to whether it would create new FFCRA paid leave provisions. However, a review of the late

December 2020 legislation revealed that Congress did not do so. It only permitted employers to continue the 2020 FFCRA leave programs, should they so choose, until March 31, 2021 and provided some tax benefits for doing so. However, the caps on the total amount of leave available to employees was not augmented. As such, in the absence of other state or local laws that adopted the FFCRA, employers are not required to continue these programs in 2021.

The City of Pittsburgh Paid Leave Requirements

With the FFCRA leave provisions expiring at the end of 2020, the City of Pittsburgh passed an ordinance, Temporary Emergency COVID-19 Paid Sick Leave (Ordinance). The Ordinance requires employers in Pittsburgh with 50 or more employees to provide paid sick leave to employees for reasons related to COVID-19. This COVID sick leave is in addition to any paid sick time under (a) employer policies; and/or (b) Pittsburgh's Paid Sick Days Act. The major provisions of the Ordinance are as follows:

As of January 1, 2021, organizations with 50 or more employees working within the City, normally working in the City but teleworking due to COVID-19, or working from multiple locations but working at least 51% of the time in the City, are covered by the Ordinance. The COVID-19 paid sick time becomes immediately available to any employee who has been employed for at least 90 days and whose need for sick time is directly related to COVID-19. The "accrual" of sick time under Pittsburgh's Paid Sick Days Act is suspended for sick time related to COVID-19. (All non-COVID-19 related requests and accrual remain covered by Pittsburgh's Paid Sick Days Act.)

Employees are entitled to use the COVID-19 Sick Time for any of the following reasons:

- Determination by health authorities, a healthcare provider or the employer that an employee's presence at work or in the community could be a health hazard because the employee was exposed to COVID-19 or has symptoms of COVID-19;
- Determination by health authorities, a healthcare provider or an employer that a family member's presence at work or in the community could be a health hazard because the family member was exposed to COVID-19 or has symptoms of COVID-19, and the employee is needed to care for the family member;
- Requirement that the employee (a) self-isolate due to a COVID-19 diagnosis; (b) self-isolate due to COVID-19 symptoms; or (c) seek medical diagnosis, care, or treatment for COVID-19 or related illnesses; OR
- Requirement that the employee care for a family member who (a) is self-isolating due COVID-19 exposure; (b) is self-isolating due to COVID-19 symptoms; or (c) needs medical diagnosis, care, or treatment for COVID-19 or related illnesses.

How much paid time off do employees receive? Employees who work 40 hours or more per week, must be provided at least 80 hours of paid COVID-19 Sick Time. Employees who work fewer than 40 hours per week are entitled to paid COVID-19 Sick Time equal to the amount of time the employee usually is scheduled to work in a 14-day period. For employees with fluctuating schedules, employers are to use the average number of hours the employee was scheduled to work over the prior 90 days of work, "including hours for which the [e]mployee took leave of any type."

Employers are not permitted to change their sick leave policies to circumvent providing both their regular sick days and paid COVID-19 Sick Time. Additionally, employers cannot require that employees use other available sick time or paid time off before using paid COVID-19 Sick Time.

One looming question is whether employers that voluntarily continue to provide paid leave under the FFCRA are in compliance with the Ordinance. That's because the Ordinance states,

To the extent that federal or state laws require employers to provide paid leave or paid sick time related to COVID-19, Employers may substitute leave under the federal or state law for its obligations under this ordinance to the extent they coincide and the relevant federal or state law permits such concurrent use of paid leave.

As of January 1, 2021, federal law does not require employers to provide paid leave or paid sick time for COVID-19 related issues. Employers may voluntarily continue to provide such leave. Additionally, it seems that voluntarily providing extended FMLA leave to parents while children's schools are closed would not qualify as a substitution for sick leave required by the Ordinance because expanded FMLA is not related to COVID-19 illness or exposure.

Pittsburgh's new paid sick leave will be available until the earlier of either Pennsylvania or Pittsburgh ending its COVID-19 emergency disaster declaration.

Conclusion

Paid sick leave is an evolving area, and we expect this trend to continue into 2021. We will continue to monitor future developments.

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