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MEMORANDUM

March 19, 2020

TO: AGRICULTURAL PRESIDENTS' COUNCIL

FROM: LOUIE A. BROWN
KEVIN W. BURSEY

RE: FAMILIES FIRST CORONAVIRUS RESPONSE ACT UPDATE

Families First Coronavirus Response Act

The Families First Coronavirus Response Act (“FFCRA”) is a stimulus plan to mitigate the impact of COVID-19 and imposes emergency paid sick leave and family leave requirements on employers. FFCRA becomes effective April 2, 2020 and expires December 31, 2020. The full text can be found at: <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>.

Paid Sick Leave

Eligibility

FFCRA requires employers to provide paid sick time to employees affected by COVID-19. Covered employers are private employers with fewer than 500 employees and public agency employers with one or more employees. Paid sick time must be provided if the employee is:

- (1) Subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- (2) Advised by a health care provider to self-quarantine due to COVID-19 concerns;
- (3) Experiencing symptoms of COVID-19 and seeking medical diagnosis;
- (4) Caring for an individual who is subject to an order in (1) or advised under (2) above;
- (5) Caring for their son or daughter due to school or daycare closures/unavailability; or
- (6) Experiencing other substantially similar conditions specified by the Secretary of Health and Human Services.

Compensation

Paid leave must equal the employee’s regular rate of pay, but is capped at \$511/day (\$5,110 in aggregate) for uses (1)-(3) and \$200/day (\$2,000 in aggregate) for uses (4)-(6). Paid leave for care of family members for uses (4)-(6) shall be two-thirds of the regular rate of compensation, but not to exceed \$200/day (\$2,000 in aggregate).

Employers of health care providers or emergency responders may opt out of these requirements.

Time Off

Regardless of how long the employee has been employed by the employer, full-time employees are entitled to 80 hours of paid sick time. Part-time employees are entitled to paid sick time equal to the average number of hours worked over a two-week period.

If time cannot be calculated with certainty for part-time employees, paid sick leave is the average number of hours the employee was scheduled to work per day over a 6-month period before taking leave. Employees who have not worked 6 months prior to leave, however, are entitled to the employee's reasonable expectation at hiring of the average number of hours per day the employee would normally be scheduled to work. Guidelines for calculating pay will be issued by the Secretary of Labor before April 2, 2020.

Emergency paid leave is in addition to any leave already offered by employers. Employers may require employees to follow reasonable notice procedures in order to continue receiving such emergency paid leave. Emergency paid sick leave does not carry over to the next year

Collective Bargaining Agreements

Employer signatories to a multiemployer collective bargaining agreement may fulfill these obligations by making contributions to a multiemployer fund, plan, or program based on the hours of paid emergency sick time each of its employees is entitled to. Employees may secure pay from such fund, plan, or program for the uses specified above.

Exemptions for Small Businesses

The Secretary of Labor may issue regulations for good cause to exempt small businesses with fewer than 50 employees if the imposition of these paid leave requirements would jeopardize the viability of the business as a going concern. No regulations have been issued yet.

The Secretary will make a model notice of these paid sick leave requirements that employers must post in conspicuous places on the premises.

Paid Family Leave

Coverage and Eligibility

FFCRA also expands coverage and eligibility under the Family and Medical Leave Act of 1993. Eligible employees are entitled to 12 workweeks of leave on the following condition: the employee is unable to work or telework because they must care for their child (under 18 years old) due to the child's school/childcare being closed or unavailable due to COVID-19 concerns.

“**Covered employer**” was largely expanded from employers with 50 or more employees to employers with fewer than 500 employees. “**Eligible employee**” was also largely expanded from employees employed for at least 12 months to employees employed for at least 30 calendar days.

Paid Family Leave

The first 10 days of leave may consist of unpaid leave. During this 10-day period, employees may elect to substitute any accrued paid leave (vacation or sick leave) to cover some or all the 10-day period. After the 10-day period, employers must pay full-time employees at two-thirds the employee's regular rate for the number of hours the employee would normally be scheduled. Paid leave is capped at \$200 per day and \$10,000 in the aggregate.

Employees who work part-time or irregular schedules are entitled to be paid for the average number of hours the employee worked per day for the 6 months prior to taking emergency leave. Employees who have not worked 6 months prior to leave, however, are entitled to the employee's reasonable expectation at hiring of the average number of hours per day the employee would normally be scheduled to work.

Where necessity for such leave is foreseeable, employees must provide employers with notice of leave as is practicable.

Job Restoration

Employees who take family leave must be restored to their former or equivalent positions upon return. However, employers with fewer than 25 employees are exempt if the position no longer exists due to economic downturn or other changes in operation caused by a public health emergency during the period of leave. Exempt employers must make reasonable efforts to restore the employee to an equivalent position. If that fails, the employer must make reasonable efforts to contact the employee if an equivalent position becomes available for up to one year following the employee's leave.

Payroll Tax Credits for Paid Sick and Family Leave

FFCRA provides tax credits to offset every dollar covered employers spend on qualified emergency paid sick and family leave. Tax credits are allowed against the employer portion of federal employment taxes each calendar quarter for 100 percent of paid leave wages. Credit will not be provided to federal and state government agency employers.

Credit is capped at \$511/day for uses (1)-(3) above or \$200/day for uses (4)-(6). Credit is also capped at 10 days of qualified sick leave wages per employee. The total amount of qualified sick leave wages considered for credit cannot exceed \$5,110 for uses (1)-(3) and \$2,000 for uses (4)-(6) per employee. For qualified family leave wages, credit is capped at \$200/day and \$10,000 in aggregate for all calendar quarters. Further, credit cannot exceed the employer's federal employment tax liabilities each calendar quarter. Excessive credit must be refunded.

Credit will be increased to the extent that an employer continues an employee's health insurance coverage while the employee is on paid leave. To avoid duplication of benefits, the employer's gross income for the taxable year must be increased by the amount of the credit. Wages considered for credit will not be accounted for purposes of determining credit under Internal Revenue Code section 45S.

A parallel credit mechanism is also included for self-employed individuals.