

How Will an Employer's Existing Paid Leave Policies Apply to The Families First Coronavirus Response Act Paid Leave Mandates

Labor & Employment Law Update

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With the ink barely dry on the president's signature, employers are now turning to whether they need to and how to comply with the Families First Coronavirus Response Act ("Act") (HR 6201). Since the law was signed by President Trump on March 18, 2020, the leave provisions are set to go into place on **April 2nd**. The US Department of Labor ("DOL") shall provide a sample notice for employers required to comply with the emergency paid sick leave provisions within seven (7) days, and we may see additional guidance from the DOL in the near future.

First, note that the paid leave mandates are not applicable unless the employee is: required or advised to quarantine by a health care provider or the government, experiencing symptoms and seeking a diagnosis, caring for an individual required or advised to quarantine, or caring for a child whose school/ day care closed. (See our March 18, 2020 Blog Update). If the employee is not requesting paid leave for one of these reasons, then the leave is not covered under the Act.

So, if the employee requests or needs paid leave for a covered reason, does an employer's existing paid leave policy come into play? The final Act removed language included in prior versions related to an employer's limitation on using its own paid leave programs prior to providing paid leave under HR 6201. However, there still remains a prohibition in requiring an employee to use "other paid leave" prior to the use of the paid mandates in this new law.

It is our interpretation at this time (*as said, the DOL will be providing a notice, and could weigh in with additional guidance prior to or on April 2nd*) that if an employer provides paid SICK leave (including local or state paid sick leave mandates), then that SICK leave could likely be used to satisfy the paid leave requirements of the Act. However, an employer looking to apply any existing paid SICK leave policy to off-set the new mandates would likely not receive the full tax credits available. On the other hand, a traditional Paid Time Off ("PTO") or vacation policy would not be applicable, most likely.

Obviously, this is a very fluid situation and we continue to monitor all developments to share with our clients and contacts.

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