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Employment Question of the Day: March 27, 2020

Legal Update

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By Emily S. Pontius and Kendra D. Simmons

Question

What do we need to know about the DOL's Families First Act Model Notice and what do we need to do now?

Answer

On March 25, 2020, the U.S. Department of Labor provided its model notice for private employers to post to notify employees of their rights under the Families First Coronavirus Response Act. The Department also posted a list of related questions and answers.

Based on our review, we have identified a few issues:

- The model notice does not separate information about emergency paid sick leave from information about expanded FMLA leave. Instead, both are under the heading "Paid Leave Entitlements," and the expanded FMLA leave is even described as "[u]p to 10 weeks more of paid sick leave and expanded family and medical leave" even though the Act caps the paid sick leave entitlement at 80 hours (or a part-time employee's two-week equivalent). Employees must keep reading to find out that the additional 10 weeks is only available for employees who cannot work because school or childcare is closed or unavailable due to COVID-19 related reasons.
- The reference to "\$12,000 total" under "Paid Leave Entitlements" is ambiguous. The additional 10 weeks of expanded FMLA leave itself would be capped at \$10,000. The total reaches \$12,000 only when the two weeks of sick leave is added.
- We anticipate employers will need to clarify for employees how the daily and total caps on compensation under the Act may limit their compensation if they take leave under the Act. The references to 100 percent and two-thirds of regular pay are more prominent on the model notice.

- The DOL has not yet specified when, before the effective date of April 1, the model notice must be posted. We recommend posting it as early as possible in the workplace, on internal and external employee websites, and emailing or direct mailing to employees working remotely. Then, keep checking the DOL website just in case the agency issues new guidance or a new version of the notice.

Many employers are periodically communicating with employees about health, safety and business continuity issues related to COVID-19. Including information about leave under the Families First Act within those communications may be an appropriate way to highlight the information. If you are sending a stand-alone email or other communication, consider language like this:

As you may know, the federal government recently passed the Families First Coronavirus Response Act to provide emergency leave to certain employees affected by COVID-19. As your employer, we are required to provide the attached notice from the U.S. Department of Labor (DOL). The DOL has not yet issued regulations on how to implement the Act, and we continue to work to determine how these new leave entitlements will apply to our company when they go into effect on April 1. Please contact Human Resources with questions you may have about eligibility for leave, and we will work to provide answers as soon as possible.

If you have questions regarding the Families First Act or the model notice, contact your Fredrikson and Byron Employment & Labor attorney.