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Families First Coronavirus Response Act signed by President Trump, employers to comply by April 2

INSIGHTSLEGAL UPDATE

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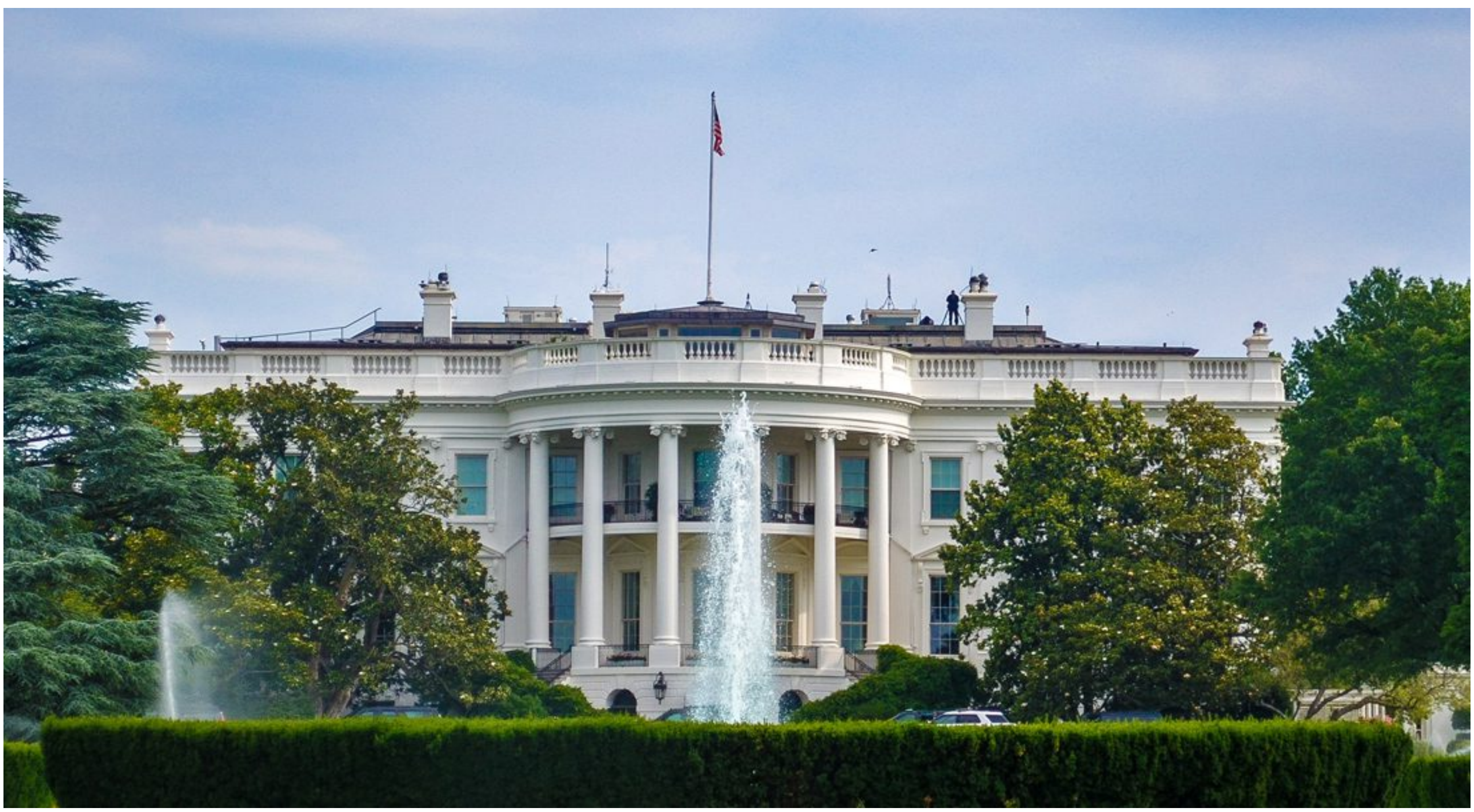

The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.

The Families First Coronavirus Response Act (FFCRA) was signed into law last night by President Trump. Two important provisions of the FFCRA—the Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act—impact employers of fewer than 500 employees and public agency employers. These provisions take effect 15 days after enactment, so affected employers must take action now to ensure compliance by April 2.

Emergency Family and Medical Leave Expansion Act—Public Health Emergency Leave: The FFCRA amends and expands the coverage of the Family and Medical Leave Act (FMLA) by providing Public Health Emergency Leave to employees who have worked at least 30 days, with some exceptions. The expansion applies even to employers of fewer than 50 employees; therefore, employers not previously covered by the FMLA will now be required to implement leave policies, possibly for the first time (see exemptions below). The amendment provides paid leave to employees unable to work or telework due to a need to care for a child under 18 where school or childcare has closed or is unavailable. The first 10 workdays would be unpaid under the amendment (note Emergency Paid Sick Leave Act below) and after that, the employee would be eligible for pay. (Employees may, at their option, use paid time off to cover the first 10 workdays.) Pay is calculated based on two-thirds of the regular rate of pay and the number of hours the employee would normally work, not to exceed $200 per day in compensation and $10,000 in the aggregate for any employee.

Emergency Paid Sick Leave Act: Additionally, the FFCRA provides for Emergency Paid Sick Leave: up to two weeks' pay, available immediately, for reasons relating to the COVID-19 pandemic. Eligible reasons include an employee's own health condition, quarantine, or caring for a dependent who is subject to quarantine or whose school or care provider is closed. The emergency pay is available to all employees regardless of tenure (see exemptions below).

Non-discrimination: The FFCRA prohibits discrimination or retaliation against employees who take leave or file complaints under the FFCRA.

Exemptions/Exclusions: The Secretary of Labor can exclude certain healthcare providers and emergency providers from coverage and can also exempt small (fewer than 50 employees) businesses when compliance would "jeopardize the viability of the business as a going concern." Employers of healthcare providers or emergency responders may elect to exclude such employees from the paid sick time and new FMLA requirements.

Funding: The FFCRA provides tax relief to employers subject to the requirements. Employers can recoup costs from tax credits against social security and certain other payroll taxes. Employers will have to track expenses and seek credits and, where employers are still overpaid in taxes, seek refunds.

Expiration: The FFCRA and its requirements expire December 31, 2020.

It is anticipated that regulations will follow to further detail the requirements and particulars of the tax credits. In addition, the Department of Labor is expected to provide a poster for employers outlining employees' rights under the FFCRA.

Saxton & Stump attorney Rick Hackman is available to further discuss the FFCRA and how our Labor and Employment Group can help you determine if the rules apply to your company, and review your company policies and procedures to ensure compliance by the April 2 deadline, if required.

SAXTON & STUMP
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