



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
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UNITED STATES DEPARTMENT OF LABOR ISSUES GUIDANCE ON NEWLY PASSED COVID-19 LEGISLATION

On March 24, 2020, the United States Department of Labor (“DOL”) issued its first interpretation of compliance issues with the newly passed Families First Coronavirus Response Act (“Act”), which is intended to cushion the economic blow of the COVID-19 pandemic. Specifically, the Act grants emergency family medical leave and paid sick leave for those whose jobs are effected by the outbreak. The DOL also noted that it will be issuing formal regulations regarding the Act in the “near future.” The law takes effect on April 1, 2020 and, underscoring the emergency nature of the law, it expires December 31, 2020.

Key points of the DOL guidance are:

- **The Act applies to private employers with fewer than 500 employees, based on the employee count when the leave is taken;**
- **“Employees” include employees on leave; temporary employees who are jointly employed by you and another employer; and day laborers supplied by a temporary agency. Independent contractors are not included;**
- **The law is retroactive, so that if an employee took a leave before April 1, 2020 for the same reasons, they still have full leave rights;**
- **Under some circumstances, the emergency paid sick leave and the emergency FMLA components cover the same terrain, specifically child care when a school is closed. The DOL advises that a worker may be entitled to both benefits in certain factual scenarios, but only for a total of twelve weeks of leave;**
- **The paid leave is based on the hours the worker would have ordinarily worked and is capped at 80 hours for two weeks and without an overtime premium, even if one of the weeks had hours in excess of forty.**

This is preliminary guidance and DOL will be developing more formal guidance and regulations. Moreover, the law directs the DOL to issue regulations exempting businesses with 50 or fewer workers if making them pay leave would jeopardize their business. Tuesday's guidance directs businesses which may seek an exemption to "document why your business with fewer than 50 employees meets the criteria set forth by the department, which will be addressed in more detail in forthcoming regulations."

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