

Multiemployer Alert

Update on Issues Affecting Taft-Hartley Plans

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Families First Coronavirus Response Act

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On March 18, 2020, the President signed the “Families First Coronavirus Response Act” in response to the coronavirus pandemic. The Act includes the following:

- No participant cost sharing for COVID-19 testing or the provider visit related to testing
- Emergency paid sick leave
- Emergency family and medical leave

These items are defined in divisions of the law and are described in more detail below.

No participant cost sharing for COVID-19 testing

Health Provisions (Division F) requires group health plans and health insurance issuers offering group or individual health insurance coverage (including *grandfathered health plans under the Affordable Care Act*) to provide coverage without any participant cost-sharing requirements (including deductibles, copayments, and coinsurance) or prior authorization or other medical management requirements, for the following items and services during the emergency period¹ (Division F):

- FDA-approved testing for COVID-19 (including the administration of such tests)
- Office visits (including in-person and telehealth visits), urgent care center visits, and emergency room visits that result in an order for testing or administration of testing

Please note that the mandate does not cover treatment for COVID-19, only testing.

Furthermore, there is no participant cost sharing for testing or provider visits that lead to COVID-19 testing under Medicare, Medicare Advantage, Medicaid, and Children’s Health Insurance Program (CHIP) as well as for uninsured individuals.

For fully insured plans, the contracted insurance carriers will implement the provisions mandated under this law. For self-insured plans, the claims administrator will need to begin processing all claims in accordance with the mandated provisions.

Self-insured plans will be responsible for the cost of coverage, while in-force fully insured premiums are not expected to change.

Emergency Paid Sick Leave

Emergency Paid Sick Leave Act (Division E) requires employers with fewer than 500 employees to provide employee paid sick time to the extent the employee is unable to work (or telework) due to any one of the reasons listed below. The Department of Labor (DOL) may exempt businesses with fewer than 50 employees. The paid sick leave is for a maximum of 80 hours and is to apply no later than April 2, 2020, and run through December 31, 2020. To be eligible, an employee must meet one of the following requirements:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19
2. The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis

¹ An “emergency period” is the period during which there exists:
(A) An emergency or disaster declared by the President pursuant to the National Emergencies Act and
(B) A public health emergency declared by the Secretary of Health and Human Services

4. The employee is caring for an individual who is subject to quarantine or isolation or has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19
5. The employee is caring for a biological, adopted, foster, or step-child whose school or place of care of the child has been closed, or the childcare provider of such child is unavailable, due to COVID-19 precautions
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor

Please note that emergency paid sick leave will be available to employees regardless of how long they have been employed by the employer. Employers of employees that are healthcare providers or emergency responders may elect to exclude such employees from this Act.

Full-time employees may receive paid leave for up to 80 hours. Part-time employees may receive paid leave up to the average number of hours worked in a two-week period. If a part-time employee's schedule varies significantly week to week, to the extent that an employer is unable to determine the number of hours worked in an average two-week period, the employee will be paid for the average number of hours that the employee was scheduled per day over the six-month period ending in the first day of leave. If the employee did not work over that six-month period, the employee will be paid up to the average number of hours per day they were expected to work when hired.

The leave generally will be paid at the employee's regular rate of pay. If the employee is taking the leave for reasons (1), (2), or (3) listed above, the maximum compensation will be \$511 per day and \$5,110 for the two-week emergency paid sick leave period. If the employee is taking leave for reasons (4), (5), or (6) listed above, the maximum compensation will be \$200 per day and \$2,000 for the two-week emergency paid sick leave period. The emergency paid sick leave could be used by the employee before any existing leave available to the employee.

Please note that pursuant to Section 5103 of the Act, employers must post a notice informing employees of their rights to emergency paid leave. The DOL will issue a model notice within seven days of enactment of the law.

The federal government will provide payroll tax credits to offset the cost of providing emergency paid sick leave.

Multiemployer collective bargaining agreements – Pursuant to Section 5106, an employer participating in a multiemployer collective bargaining agreement can fulfill its obligations by making contributions to a multiemployer fund, plan, or program based on the hours of paid sick time each of its employees is entitled, provided that the fund, plan, or program enables employees to secure pay from such fund, plan, or program based on hours they have worked.

Emergency Family and Medical Leave

Emergency Family and Medical Leave Expansion Act (Division C) requires employers with fewer than 500 employees to provide up to 12 weeks of job-protected leave related to the following:

- Caring for a biological, adopted, foster, or stepchild under age 18 because school or childcare is closed, or a childcare provider is unavailable due to an emergency with respect to COVID-19 declared by a local, state, or federal authority

The DOL may exempt businesses with fewer than 50 employees. The emergency family and medical leave provisions are to apply no later than April 2, 2020, and run through December 31, 2020, and must be available to all employees who have been employed for more than 30 days. Employers of employees that are healthcare providers or emergency responders may elect to exclude such employees from this Act. The Emergency Family and Medical Leave Expansion Act only applies to employees who have been employed for at least 30 calendar days.

Please note that the first 10 days of this period may be unpaid. An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave, but employers may not require such substitution. After 10 days, the paid amount will be at least two-thirds of an employee's regular rate of pay or the number of hours the employee would otherwise be normally scheduled to work (limited to \$200 per day or \$10,000 in aggregate).

Multiemployer collective bargaining agreements – Pursuant to Section 3103, an employer participating in a multiemployer collective bargaining agreement can fulfill their Family and Medical Leave Act (FMLA) obligations by making contributions to a multiemployer fund, plan, or program based on paid leave each of its employees is entitled to under such section while working under the multiemployer collective bargaining agreement, provided that the fund, plan, or program enables employees to secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for paid leave. Hours are calculated by the number of hours the employee would otherwise be normally scheduled to work or, in cases of employees with variable hours, the average number of hours that the employee was scheduled per day over the six-month period ending on the date on which the employee takes leave.

The federal government will provide payroll tax credits for the employer to offset the costs of providing paid leave. Employers must also make a reasonable effort to restore the employee to a position equivalent to the position the employee held when their leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment.

Additional legislation may be introduced to provide relief for industries most adversely affected by the coronavirus. This could include for example, subsidizing a portion of COBRA premiums (as was done in 2009), extending unemployment benefits, or permitting in service distributions from pension and retirement savings plans without penalty among other things. We will continue to monitor events and keep our clients apprised of any developments.



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