



Stay Tuned: Federal Government Announces COVID-19 Relief For Small And Midsize Businesses

Insights

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In an apparent effort to ease some of the anxieties surrounding the impact of the Families First Coronavirus Response Act on employers, the Department of Treasury, IRS, and Department of Labor issued a press release on Friday, March 20, announcing plans to provide some relief for small and midsize employers. These employers, in particular, have understandable concerns regarding their cash flow and ability to afford the expansive paid leave entitlements under the new law in light of the growing number of state and local orders shuttering non-essential businesses. Many businesses are being forced to make tough decisions on whether to furlough or layoff non-essential employees due to the financial pressures caused by this unprecedented pandemic. The hope is that the planned actions – which have not yet been finalized or implemented – will lessen the burdens of the new legislation and provide a path for businesses to succeed in these uncertain times.

Exemption For Small Businesses (Fewer than 50 Employees)

Importantly, the Labor Department announced that it would take advantage of the law's provision allowing the Secretary of Labor to implement regulations carving out an exemption for small businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business. At this time, it appears this exemption will be limited to leave requirements relating to school closings or childcare unavailability.

The Department of Labor committed to providing “simple and clear criteria” articulating the standard to determine whether there are “circumstances involving jeopardy to the viability of an employer’s business as a going concern.” We will provide a further update as soon as this emergency guidance is issued.

Recouping Costs Associated With Paid Leave

Addressing what seems to be one of the biggest concerns with the new legislation, the IRS clarified the “dollar-for-dollar” tax credit available to subsidize the paid leave entitlement, which may include employers’ health insurance coverage costs for eligible employees on leave. The IRS clarified that “employers who pay qualifying sick or child care leave will be able to retain an amount of their regular payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.”

The payroll taxes that are available for retention will include: (1) withheld federal income taxes; (2) the employee share of Social Security and Medicare taxes; and (3) the employer share of Social

Security and Medicare taxes with respect to all employees (not just employees who take leave). If payroll taxes are insufficient to cover the cost of qualified sick and childcare leave paid, employers will be able to file a request for an “accelerated payment” from the IRS, which the IRS expects to process in two weeks or less.

The IRS indicated that it will release the details of the new, expedited procedure to provide reimbursement within the next week. This guidance will be especially important for employers struggling with the realities of reduced sales and revenues. Employers should note, however, that eligibility for the tax credit and reimbursement is limited to “qualified” leave, meaning that: (1) employers who are exempted from the law (small businesses); (2) or who employ certain workers who are exempted (health care providers and emergency responders); or (3) whose employees do not meet one of the qualified reasons for leave, will not be eligible for these benefits.

Adjustment Period

The Labor Department signaled that it will be issuing a temporary non-enforcement policy to provide employers time to adjust to the new paid leave requirements. Employers who act reasonably and in good faith compliance with the law will not be subject to enforcement action by the Labor Department during a 30-day period (though it presently unclear whether this 30-day period is following enactment, or the April 1 effective date). The Labor Department states that it will instead focus its efforts on providing “compliance assistance” to employers during this period. Employers subject to this law should take advantage of this period to ensure paid leave is being provided in compliance with the law’s requirements.

Conclusion

We anticipate that the Department of Labor and IRS will issue more comprehensive guidance in the next week providing greater clarity in this area. Be sure to stay tuned and review the guidance when it is released as the details may change between now and then. For now, it appears that the government is poised to offer some meaningful relief to small and midsize employers.

We will continue to monitor this rapidly developing situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips’ alert system](#) to gather the most up-to-date information. For further information or advice on how to satisfy notice requirements as an employer, contact your Fisher Phillips attorney or any member of [our COVID-19 Taskforce](#), or review our [Comprehensive and Updated FAQs](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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