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**MEMORANDUM**

To: Jordan Price Clients

Date: March 19, 2020

Re: FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (“Act”) passed in the Senate on March 18 and was signed into law by the President hours later. There are several provisions in the Act that directly impact employers related to mandatory paid sick leave, paid extended leave under the FMLA for childcare, and notice/posting obligations. We hope this information assists you as you navigate through this unprecedented situation.

**EFFECTIVE DATE:** The Act goes into effect **April 2, 2020** and expires December 31, 2020.

**APPLICABILITY:** Currently, the Act applies to **all employers with fewer than 500 employees**. The Act allows the Department of Labor to enact regulations to exempt small businesses with fewer than 50 employees from the leave requirements of the Act if imposing the requirements would jeopardize the viability of the business as a going concern. However, no such regulations are in effect at this time. There is language in the Act that allows employers of certain health care providers and emergency responders to opt out of the requirements.

**PAID SICK LEAVE:** Employers are required to provide each employee paid sick leave if the employee is unable to work (or telework) due to one of the following:

- (a) the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- (b) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (c) the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- (d) the employee is caring for an individual who is subject to an order as described in (a) or has been advised as described in (b);
- (e) the employee is caring for the employee’s child because the child’s school or place of care has been closed, or the child’s childcare provider is unavailable, due to COVID-19 precautions; and

- (f) 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.

The amount of paid sick leave that must be granted depends on the employee's work schedule. Full time employees are entitled to 80 hours, and part-time employees are entitled to the number of hours the employee works on average over a 2-week period.

For (a), (b), and (c) above, the paid sick leave is at the employee's regular rate of pay but is capped at \$511 per day and \$5,110 in the aggregate. For (d), (e), and (f), the paid sick leave must be at least 2/3 of the employee's regular rate of pay but is capped at \$200 per day and \$2,000 in the aggregate.

The sick leave described above is available for immediate use and is not dependent upon how long an employee has been employed. Further, employees are entitled to use this emergency sick leave for the COVID-19 purposes described above prior to using any other paid time off that the employer offers.

**EXTENDED LEAVE UNDER THE FMLA:** The FMLA typically only applies to employers with 50 or more employees. That is not the case with what has been called "Public Health Emergency Leave." The below requirements currently apply to all employers with fewer than 500 employees.

Employers must provide up to 12 weeks of leave to an employee who is unable to work (or telework) due to a need for leave to care for the employee's child (under 18 years of age) if the child's school or place of care has been closed, or the child's childcare provider is unavailable, due to an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

This leave is available to employees who have been employed at least 30 calendar days at the time the leave is requested.

Traditionally under the FMLA an employer only had to provide unpaid leave. That is also not the case with Public Health Emergency Leave. The first 10 days are unpaid, though the employee has the option of using other paid leave offered by the employer to cover this period. After the first 10 days, any Public Health Emergency Leave that is taken is paid leave. The employer must pay at least 2/3 of the employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work, but the total paid leave is capped at \$200/day and \$10,000 in the aggregate.

There are also provisions for calculating the total number of hours to be paid to employees who work schedule fluctuates. Employees who work a part-time or irregular schedule are paid based on the average number of hours the employee worked for the 6 months prior to taking the emergency leave. If the employee has been employed for fewer than 6 months, the employee is paid based on the expectation at hiring of the average number of hours the employee would be normally scheduled to work.

Under the FMLA, employers are required to restore returning employees to their original positions prior to taking leave. That remains the case with Public Health Emergency Leave, with the following exception. An employer who has fewer than 25 employees does not have to restore an employee to his or her prior position if all the below conditions are met:

- (a) the position held by the employee has been eliminated due to economic/operating conditions caused by the COVID-19 emergency;
- (b) the employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment; and
- (c) if the reasonable efforts of the employer fail, the employer makes reasonable efforts to contact the employee if an equivalent position becomes available. The period during which the employer must make efforts to contact the employee is the 1-year period beginning on the earlier of the date on which the qualifying need concludes or 12 weeks after the date the employee's leave commences.

**NOTICE OBLIGATIONS:** Employers must post and keep posted in a conspicuous place where other required employment notices are customarily posted a notice regarding the requirements of the Act. The Secretary of Labor has until around March 25 to create a model notice.

**COSTS ASSOCIATED WITH PAID SICK LEAVE AND PUBLIC HEALTH EMERGENCY LEAVE:** While employers initially pay for both types of leave, the Act provides that employers will be fully reimbursed by the federal government through refundable tax credits that are counted against the employer's payroll tax. The Treasury Department will be issuing regulations and/or guidance regarding these tax credits.

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