

**PUERTO RICO AND US LEGISLATION ESTABLISH SPECIAL EPIDEMIC LEAVES**

House Bill 2428 was sent to La Fortaleza for Governor Vazquez's signature. If enacted, the law will amend Article 6 of Act No. 180-1998 to provide that, in cases where the Governor or the Secretary of Health declares a state of emergency, any employee suffering or who suspects to suffer from COVID-19 that motivated the state of emergency, will be entitled to a special leave. The Act provides for the exhaustion of leaves in the following manner:

1. The employee shall exhaust all accrued sick leave.
2. After exhausting the sick leave, the employee shall use any other accrued leave to which he/she is entitled.
3. If the employee continues to be ill, the employer will grant an emergency leave, with pay, for up to five working days.

The amendment to Act No. 180-1998 further states that the employer may not consider any absences due to sick leave or the emergency leave, for disciplinary actions or employment determinations.

On March 18, 2020, President Trump signed into law the *Families First Coronavirus Relief Act*. The act creates two new types of emergency leaves. The leaves, however, will not be required for companies employing more than 500 persons, or for those with less than 50 employees who file a petition with the US Department of Labor and establish that complying with the leave requirements would jeopardize their viability as a going concern. Furthermore, the *Families First Coronavirus Relief Act* amended the *Family Medical Leave Act* and references the *Fair Labor Standards Act of 1938*, both statutes applicable to Puerto Rico. In light of this, and the fact that the *Families First Coronavirus Relief Act* provides for very few exceptions, it is safe to assume that the new leaves apply to Puerto Rico employees and employers. This provision will become effective no later than 15 days after its enactment and has a December 31, 2020 sunset provision.

If leaves are granted under the *Families First Coronavirus Relief Act*, the employer may request credits with respect to amounts paid for the leaves against the employer's contribution to social security.

In summary, the leaves provided under the *Families First Coronavirus Relief Act* are the following:

1. *Emergency Paid Sick Leave* – applies to any employee, regardless of how long the employee has been working for the employer and provides a leave with pay up to 10 days, according to the following terms:
  - a. The higher of (1) the employee’s regular rate of pay, (2) the federal minimum wage, or (3) the local minimum wage, with a cap of \$511.00 per day and up to \$5,110 in aggregate, if:
    - i. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
    - ii. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
    - iii. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
  - b. Two-thirds of the higher of (1) the employee’s regular rate of pay, (2) the federal minimum wage, or (3) the local minimum wage, with a cap of \$200.00 per day and up to \$2,000 in aggregate, if:
    - i. The employee is caring for an individual who is subject to an order of quarantine or isolation or has been advised to self-quarantine due to concerns related to COVID-19.
    - ii. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
    - iii. The employee is experiencing any other substantially similar condition specified by the Secretary of Health, Secretary of Labor and the Secretary of Treasury.

The Act prohibits the employer to retaliate or discriminate against an employee for using these leaves or who files a complaint related to the Act. Furthermore, it prohibits employers to require employees to exhaust any other paid leave provided to the employee, before using the paid sick time under the *Emergency Paid Sick Leave*. Finally, not complying with the Act will be deemed as a violation of the FLSA.

The paid sick leave ends beginning with the employee's next scheduled work shift immediately following the end of the need for paid sick time. An employer may not require, as a condition of providing paid sick time under this Act, that the employee search for or find a replacement employee to cover the hours during which the employee is using paid sick time.

An employer may not require an employee to use other paid leave provided by the employer before the employee uses the paid sick time under the Act.

Employers are required to post in the workplace a notice (poster) that will be prepared by the US Secretary of Labor and Human Resources.

Nothing in the Act shall be construed to diminish the rights or benefits that an employee is entitled to under any other Federal, State, or local law; collective bargaining agreement; or existing employer policy; or to require financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment or paid sick time under this Act that has not been used by such employee.

2. *Emergency Family and Medical Leave Expansion Act* – the Act amends the *Family and Medical Leave Act of 1993* to require the employer to grant a 12 week leave, in cases where there is a *qualifying need related to a public health emergency*. For purposes of this leave, the Act defines eligible employee, as a person who has been employed at least 30 calendar days. Likewise, the Act states that a *qualifying need related to public health emergency* is when the employee is unable to work (or telework) due to a need for leave to care of a child under 18 years of age of such employee, if the school or place of care is closed because of COVID-19. As to this leave:
  - a. The first 10 days for which the employee takes leave may be without pay, but the employee may choose to use any accrued vacation leave, personal leave, or medical or sick leave during the unpaid leave period.
  - b. The amount paid by the employer during the rest of the paid leave, after the first 10 days, shall be no less than 2/3 of the employee's regular rate of pay, according to the FLSA, up to \$200.00 per day and \$10,000.00 in total.

Employers of health care provider or emergency responder employees may exempt those employees from coverage.

FMLA's standard job restoration requirements will apply to employers with 25 or more employees. For employers who employ fewer than 25 employees, job restoration is not required if statutory conditions are met.

We will continue to keep you advised on this developing legal scenario and are available to answer your questions or doubts on how to comply with the new statutory requirements.

If you have any question or concern, please **Contact us**

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