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FFCRA CLARIFICATION: Emergency FMLA/Sick Leave/Payroll Tax Credits

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The proposed language in the CARES Act includes important revisions and/or clarifications to the Families First Coronavirus Response Act (“FFCRA”) passed by Congress on March 18, 2020.

Modification of the Emergency FMLA Expansion Act

The CARES Act clarifies that an employer's liability under the Emergency FMLA Expansion Act is limited to \$200 per day and \$10,000 in the aggregate for each employee. The CARES Act also expands the definition of “eligible employees” in the Emergency FMLA Expansion Act to include rehired employees if all the following conditions apply:

- the employee was laid off no earlier than March 1, 2020,
- had worked for the employer no less than 30 of the last 60 calendar days prior to the employee's layoff, and,
- was rehired by the employer.

Modification of the Emergency Paid Sick Leave Act

Similarly, the CARES Act clarifies that an employer's liability under the Emergency Paid Sick Leave Act is limited to \$511 per day and \$5,110 in the aggregate for each employee for their own care, and \$200 per day and \$2,000 in the aggregate for each employee for the care of others or because the employee is experiencing any other substantially similar condition as described in the Act.

Modification of Emergency Employer Payroll Tax Credits Mechanism

To address some of the cash flow concerns arising under FFCRA, the CARES Act provides a mechanism for employers to receive an advance of the payroll tax credits (including any refundable credits). It also provides penalty relief to employers who do not make a deposit of payroll taxes in anticipation of the payroll tax credits being available.

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