Families First Coronavirus Response Act Impacts for Wisconsin Union Construction Companies

The Families First Coronavirus Response Act was passed by Congress and signed into law by the President on March 18, 2020. The measure contains leave provisions applicable to private employers with fewer than 500 employees. The final version of the legislation provides the following leave benefits to employees of covered employers.

1. Up to 80 hours (pro-rated for part-time employees) of paid sick leave, available for immediate use regardless of length of employment, if the employee cannot work (or telework) because he/she:
   • Is experiencing symptoms of COVID-19 and seeking a medical diagnosis, which is paid at 100% and capped at $511 per day and $5,110 in the aggregate.
   • Is subject to a government quarantine or has been told by a health care provider that he or she should self-quarantine due to COVID-19, which is paid at 100% and capped at $511 per day and $5,110 in the aggregate (or assisting an individual who must quarantine/self-quarantine for those reasons, which is paid at 2/3 the employee’s rate and capped at $200 per day and $2,000 in the aggregate).
   • Is caring for a son or daughter if his/her school/child care provider is unavailable due to COVID-19, which is paid at 2/3 the employee’s rate and capped at $200 per day and $2,000 in the aggregate.
   • Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, which is paid at 2/3 the employee’s rate and capped at $200 per day and $2,000 in the aggregate.

2. Up to 12 weeks of expanded FMLA leave, unpaid during the first 10 days (which are practically covered by 1. above), and then paid at 2/3 the employee’s rate (but capped at $200 per day and $10,000 in the aggregate) and available to anyone after 30 days of employment for time to care for the employee’s son or daughter if the child’s school/child care provider is unavailable due to COVID-19 and the employee is unable to work (or telework).

Other key points from the act are as follows:

• An employer cannot force employees to use other forms of leave concurrently with the new and additional leave provided by the act.

• Covered employers must post a notice to employees about their rights under this act (at least as to 1.) once the Department of Labor prepares it.

• The legislation would expire on December 31, 2020, and unused time would not carry over from one year to the next.
• The act would become effective within 15 days of enactment (likely April 2), and the Secretary of Labor is charged with issuing implementation guidelines within that period of time.

• Employers may not change paid leave policies once the legislation is enacted to avoid being subject to the act's paid sick time provisions.

• An employer may elect to exclude health care providers and emergency responders from the leave benefits.

• The Secretary of Labor is empowered to exempt small businesses (fewer than 50 employees) from the leave benefits if the requirements would jeopardize the viability of the business as a going concern.

• Funding of Paid Sick Leave - Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified sick leave wages paid by the employer. Qualified sick leave wages are capped at $511 per day ($200 per day if the leave is for caring for a family member) and 10 days. The tax credit is applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified sick leave exceed the taxes they would owe. The Treasury Secretary is provided with regulatory authority intended to help with cash flow issues, for example by waiving penalties on failing to deposit payroll taxes in anticipation of the credit.

• Additional Credit for Health Plan Expenses: The amount of the tax credit is further increased by the amount of the expenses of the employer’s health care plan allocable to the qualified sick leave. This allows the employer to seek reimbursement for the cost of continuing to provide health insurance while the employee is on sick leave.

• Tax on Employers: Paid sick leave is not considered wages for Social Security tax purposes and for half of the Hospital Insurance Tax. For the other half of the Hospital Insurance Tax, the applicable tax credit is increased to cover the cost of the payroll tax. Self-Employed: There is a similar tax credit against self-employment taxes for individuals who are self-employed but would otherwise qualify for paid sick leave if they were an employee of an employer.

It is important to know that the situation is extremely fluid and things are changing on a daily basis. Congress is anticipated to pass a Phase 3 of a coronavirus relief package in the coming days, which will be aimed at helping out businesses and individuals who are affected during this time. We will continue to give members updates that pertain to the industry and their business as they become available.

For those employees working under a collective bargaining agreement, the Act does include payment of wages and healthcare benefits.