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Coronavirus Relief Act – Summary of the Emergency Family and Medical Leave Expansion Act (EFMLA)

Expiration: December 31, 2020

Eligibility: Employee has been employed at least 30 calendar days.

Covered Employers: Fewer than 500 employees

Qualifying Need Related to Public Health

Emergency: Means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency. (Child care provider refers to a paid provider).

Period of Leave: Up to 12 weeks of job-protected leave

Exclusion: DOL has authority to issue regulations to exclude healthcare providers and emergency responders from eligibility for leave related to the public health emergency.

Exemption: DOL has authority to issue regulations to exempt small businesses with fewer than 50 employees where imposing the leave requirements would jeopardize the continuing viability of the business.

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Unpaid leave for first 10 days: The first 10 days may be unpaid. Eligible employees may substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid FMLA leave.

Paid Leave after 10 days:

- **Pay Calculation:** Paid leave is calculated at two-thirds of an employee's regular rate of pay, and the number of hours the employee would otherwise be normally scheduled to work.
- **Pay Cap:** No more than \$200 per day, and \$10,000 total per employee
- **Calculating Employee's Schedule to Determine Pay (if schedule varies from week to week):** Average number of hours the employee was scheduled per day over the six-month period ending on the date of the first day of leave (including hours for any leave taken). If employee has not worked six months, then the employer must use the reasonable expectation of the employee at the time of hiring, of the average number of hours per day that employee would normally be scheduled to work.

Employee Notice Requirements: If leave is foreseeable, notice of the leave must be provided "as is practicable." (Otherwise no notice is required).

Job Restoration: No job restoration requirements for employers with fewer than **25 employees**, so long as each of the following conditions are met:

- Employee takes qualifying leave related to the public health emergency.
- Position held by the employee when the leave started does not exist because of economic conditions or other changes in the employer's operations that affect employment, and are caused



by a public health emergency during the period of leave.

- Employer makes reasonable efforts to restore the employee to a position equivalent to the position that the employee held (equivalent benefits, pay, and terms/conditions of employment).

If such reasonable efforts fail, employer makes reasonable efforts to contact the employee if an equivalent position becomes available during the one-year period beginning on the earlier of: (A) the date on which the qualifying need related to the public health emergency ends; or (B) the date that is 12 weeks after the date on which the employee's leave starts.

If you have any questions regarding the Emergency Family and Medical Leave Expansion Act or other Labor and Employment issues, please do not hesitate to contact Jason Kim or your Neal Gerber Eisenberg attorney.

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