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## COMMON QUESTIONS RE: HOUSE BILL

### **The paid sick leave and emergency FMLA requirements do not apply to private employers with 500 or more employees?**

- Correct. Both the paid sick leave and emergency FMLA requirements apply to private employers with *fewer* than 500 employees. For sick leave, public entities are covered if they employ 1 or more employees.
- Employees are counted if in the United States, the District of Columbia, or any territory or possession of the United States.
- It is our understanding that this issue has been subject to debate and negotiations between the White House and Congress and that revisions could be made when the Senate takes the bill up.

### **What is the effective date of the new requirements?**

- Both the paid sick leave and the emergency FMLA requirements take effect no later than 15 days after enactment.
- So, if revisions are made (such that some or all of these sections apply to your company), you will have 15 days to prepare for implementation.

### **What is the rate of pay?**

- For **paid sick leave**, employees are compensated at the higher of their regular rate, the federal minimum wage, or the local minimum wage. However, if the employee is absent to care for a sick family member or a child unable to attend school, they are compensated at 2/3 of the rate they otherwise would receive.
- For **emergency family and medical leave**, (after the first 14 days during which the employee can take unpaid leave or paid leave, if available), employees are compensated at 2/3 of their regular rate.
- Regular rate of pay under both is determined as under section 7(e) of the Fair Labor Standards Act.

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### **Are employers required to pay the paid sick leave and emergency FMLA now (when law is in effect), and then seek reimbursement via tax credits?**

- Yes. Under both provisions, employers subject to the requirements are entitled to a tax credit equal to the amount of the qualified sick leave or paid family leave requirements paid by the employer (subject to the caps discussed below).
- The tax credits for qualified wages are capped at different amounts under the two provisions.
  - Paid Sick Leave - \$511 per day (\$200 per day if caring for a family member) and 10 days in each calendar quarter.
  - Emergency FMLA Leave - \$200 per day and \$10,000 overall per calendar quarter.
- The tax credits are applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified leaves exceed the taxes they would owe.

### **How do the paid sick leave requirements interact with paid sick leave the employer already provides pursuant to employer policy or state/local laws?**

- The paid sick leave requirements say that with respect to an employer that provides paid leave on the day before enactment of this law, the paid sick leave shall be made available to employees of the employer “in addition to such paid leave.”
- The bill also states that it shall not be construed in any way to diminish the rights of benefits that an employee is entitled to under any other federal, state or local law.
- We interpret this to mean that the new paid sick leave requirement is in *addition* to both sick leave provided under an existing policy or mandated under state or local law.
- In addition, the paid sick leave requirement states that an employer may not change such existing paid sick leave policies on or after the date of enactment of the new law to avoid being subject to the above.

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### **Is the emergency paid family and medical leave in addition to existing unpaid leave under the FMLA?**

- There is nothing in the new law to suggest this gives an employee more than a total of 12 weeks of leave in a 12-month period under the FMLA.
- This enactment adds new qualifying reasons for leave under the FMLA but does not expand the total of 12 weeks under the FMLA.

### **Do employees have to provide notice?**

- The emergency FMLA provisions provide that where the necessity for leave is foreseeable, an employee shall provide the employer with such notice of leave “as is practicable.”
- The paid sick leave provisions provide that, after the first workday (or portion thereof) an employee receives paid sick leave under this law, an employer may “require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.”

### **Are there notice requirements employers must provide?**

- For **paid sick leave**, the bill requires employers to post a notice regarding the requirements of the law. The Secretary of Labor is required to make a model notice publicly available not later than 7 days after enactment of the new law.
- The **emergency family and medical leave** provisions do not contain a new specific notice requirement. However, under the FMLA, all covered employers must display a general notice (FMLA poster) about the FMLA.

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