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Unemployment Insurance and Sick Leave Provisions under Recently-Passed Laws

This Legal Alert highlights unemployment insurance and sick leave provisions of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) and the Families First Coronavirus Response Act (the “FFCRA”).

The CARES Act was enacted on March 27, 2020, and the FFCRA was enacted on March 18, 2020. The U.S. Department of Labor has also provided some guidance on the sick leave provisions of the FFCRA. Altogether, the Acts and guidance from the U.S. Department of Labor provide the following:

Unemployment Insurance Provisions:

Eligibility: Individuals who have been furloughed or out of work as a direct result of COVID-19, self-employed individuals, gig workers, and those who have exhausted existing state and federal unemployment benefit provisions are now eligible to receive unemployment benefits.

But individuals who: (i) have the ability to telework with pay; and (ii) are receiving paid sick leave or other paid benefits (even if they otherwise satisfy the criteria for unemployment under the new law) **are not** eligible for unemployment benefits.

Administration of Benefit: Each state administers its unemployment benefit program. If a state enters into a written agreement with the U.S. Department of Labor to provide the benefits, it will be reimbursed in whole or in part for the cost of the benefits plus administrative expenses.

Types of Benefits Provided: Individuals will receive an additional \$600 for each week he/she is receiving unemployment benefits. The additional amounts will be paid from March 27, 2020, through July 31, 2020. An individual must be able and available to work and actively seeking work, unless they are unable to do so as a result of COVID-19, quarantine, or movement restriction.

A state may provide the COVID-19 unemployment benefits to individuals who (i) have exhausted all of the unemployment benefits available to them under existing state and federal law; or (ii) otherwise are not eligible for benefits under existing state and federal law. A state may also agree to waive the waiting period for receipt of benefits so that individuals do not experience gaps in income.

Time Periods for Expanded Benefits: The CARES Act provides unemployment benefits to covered individuals who are not otherwise entitled to benefits under existing state or federal law for weeks of unemployment, partial unemployment, or inability to work as a result of COVID-19 **between January 27, 2020, through December 31, 2020.** This period includes any waiting periods for benefits under applicable state law.



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And the benefits may not extend beyond 39 weeks (including any unemployment benefits or extended benefits received under current state or federal law). But if the duration of extended benefits is extended, then the total benefit may extend beyond 39 weeks by that same additional period of extended benefits.

Sick Leave Provisions

Paid Sick Emergency Leave Minimums: An employee is entitled to up to two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay if he/she is subject to a federal, state or local quarantine or isolation order related to COVID-19; (ii) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (iii) is experiencing symptoms of COVID-19 and seeking medical diagnosis.

An employee is entitled to up to two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

Finally, an employee who has been employed for at least 30 calendar days is entitled to up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where he/she is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Covered Employers: The paid sick leave and expanded family and medical leave provisions apply to certain public employers, and private employers with fewer than 500 employees. Most federal government employees are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act. Thus, they would not be covered by the expanded family and medical leave provisions of the FFCRA. But they would be covered by the paid sick leave provisions.

A small business with fewer than 50 employees may qualify for an exemption from the requirement to provide paid sick emergency leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

Emergency Paid Sick Leave Minimums: Employers may pay no more than:

- \$511 per day or \$5,110 in the aggregate for each employee who is taking paid sick emergency leave if the employee: (i) is subject to a federal, state or local quarantine or isolation order related to COVID-19; (ii) has been advised by a



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health care provider to self-quarantine due to concerns related to COVID-19; or
(iii) is experiencing symptoms of COVID-19 and seeking medical diagnosis; or

- \$200 per day or \$2,000 in the aggregate for each employee who is taking paid sick emergency leave if the employee: (i) is caring for an individual who is subject to a federal, state or local quarantine order; (ii) is caring for an individual who has been advised to self-quarantine due to concerns related to COVID-19; (iii) is caring for the employee's son or daughter, if the child's school or childcare facility has been closed or the child's care provider is unavailable due to COVID-19 precautions; or (iv) is experiencing any other substantially similar condition specified by U.S. Department of Health and Human Services in consultation with the U.S. Departments of the Treasury and Labor.

Expiration of Paid Sick Leave: An employer's requirement to pay for sick leave to an employee will expire on the earlier of: (i) the time when the employer has paid that employee for paid leave for an equivalent of 80 hours of work; or (ii) when the employee returns to work after taking the paid leave.

If you have any questions about any employment law issues you may be facing, please contact **Nwa'ndo Ume-Nwagbo** by phone at 404-418-8492, ext. 103 or by e-mail at: neu@stulawgroup.com.

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