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Philadelphia Expands Emergency Paid Sick Leave Benefits

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On September 17, 2020, Philadelphia passed the Public Health Emergency Leave Bill, which broadens the scope of Philadelphia's Promoting Healthy Families and Workplaces sick leave law by providing paid "public health emergency leave" to individuals who work within the geographic boundaries of Philadelphia, including individuals working for companies with 500 or more employees. The bill is intended to expand paid sick leave benefits to individuals who are not otherwise covered by the Families First Coronavirus Response Act (FFCRA).

Overview

Under the paid sick leave bill, "covered individuals" will be entitled to up to 112 hours of paid "public health emergency leave." A covered individual may use public health emergency leave for situations that mirror the FFCRA, including when the individual is unable to work because he or she is:

- Subject to a federal, state or local quarantine or isolation order related to the public health emergency;
- Advised by a healthcare provider to self-quarantine due to concerns related to the public health emergency;
- Experiencing symptoms related to the public health emergency and seeking a medical diagnosis;
- Caring for an individual who is subject to a federal, state or local quarantine or isolation order related to the public health emergency, or has been advised by a healthcare provider to self-quarantine due to concerns related to the public health emergency;
- Caring for a child of such covered individual if their school or place of care has been closed, or the childcare provider of such child is unavailable due to precautions taken in accordance with the public health emergency response; and/or
- Experiencing any other substantially similar condition specified by the United States Secretary of Health and Human Services in consultation with the United States Secretary of the Treasury and the United States Secretary of Labor.

Individuals who are able to telework are not entitled to public health emergency leave under the bill.

Employer Coverage

The Public Health Emergency Leave Bill covers all “hiring entities,” which are broadly defined as any employer, individual, corporation or other entity that employs or pays wages to a covered individual for services rendered in Philadelphia, regardless of the entity’s size or number of employees.

Covered Individuals

The Public Health Emergency Leave Bill defines “covered individuals” to include all employees and workers or independent contractors who perform at least 40 hours of services a year within the geographic boundaries of Philadelphia.

Notably, any individual who is entitled to paid leave under the FFCRA is not also entitled to paid leave under the Public Health Emergency Leave Bill from the same hiring entity. The bill also carves out certain exceptions for employees who are subject to collective bargaining agreements.

Amount of Leave

A covered individual who works 40 hours or more per week is entitled to the greater of 80 hours of leave or the average amount of hours that individual worked over a 14-day period, up to a maximum of 112 hours. Exempt employees under the Fair Labor Standards Act (FLSA) are generally assumed to work 40 hours in each week.

A covered individual who works fewer than 40 hours per week is entitled to leave equal to the amount of average hours worked in a 14-day period.

The following calculation should be used to determine the average number of hours in a 14-day period for covered individuals whose hours vary from week to week:

- A number equal to the average hours the individual worked per day over the 6-month period ending on the date the public health emergency was declared, multiplied by 14, including any hours for which the individual took leave of any type; or
- If the covered individual did not work over such period, the reasonable expectation at the time of hiring of the average hours the individual would normally work in a typical 14-day period.

Rate of Pay

Hiring entities must provide paid leave at the covered individual’s regular rate of pay, with the same benefits (including health care benefits) as the individual normally receives from the hiring entity.

Timing of Leave

A covered individual may use all or a portion of his or her leave at any time during the public health emergency and for up to one month following the conclusion of the public health emergency. Leave may run concurrently with other forms of leave provided by state or federal law, unless otherwise prohibited.

The leave requirement under the bill is effective immediately but is set to expire on December 31, 2020.

Notice Requirements

A covered individual seeking paid leave must provide his or her hiring entity with notice of the need for leave as practicable and as soon as feasible. A hiring entity may only request the individual to provide a self-certified statement that the leave is to be taken in accordance with the bill. Additional details are needed about the employer's right or obligation to substantiate requests for leave.

Hiring entities are required to provide employees and covered individuals with notice of their right to public health emergency leave within 15 days of the bill becoming law.

Employer Action

Employers with employees performing service in Philadelphia should work with labor and employment counsel to review their leave policies and procedures to ensure that they are compliant with the amendments to the Promoting Healthy Families and Workplaces law.

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