



March 16, 2020

Re: Proposed Federal Leave Legislation in Response to the Coronavirus

At MetLife, we have been monitoring the evolving situation regarding the Coronavirus and how pending federal legislation may impact our customers' leave plans and obligations under the Family and Medical Leave Act ("FMLA"). We are reaching out to you regarding the pending federal legislation and what it may mean for you and your workforce. Although the proposed legislation only applies to employers with fewer than 500 employees, our intent is to share best practices that are applicable for all employers to consider.

On March 13, 2020, the U.S. House of Representatives passed the Families First Coronavirus Response Act (the "Act"), which allows free Coronavirus testing, establishes paid and unpaid leave programs, provides grants to states to process and pay unemployment insurance benefits, expands food service initiatives, and increases federal Medicaid funding. Coronavirus, for the purpose of the Act, means SARS-CoV-2 or another coronavirus with pandemic potential ("Coronavirus"). The leave provisions of the Act, which **only apply to employers with fewer than 500 employees**, require covered employers to provide job-protected paid leave to employees for up to 12 weeks for a Coronavirus-related absence. The Act does so by expanding the FMLA and adding a new paid sick leave program. The Senate is expected to pass the current version of the Act early this week, although it is possible that some provisions of the Act will change before the President signs the bill into law. However, given the support for this proposed legislation, we felt that it was important to share this update as soon as possible. A summary of the legislation is attached to this letter.¹

What Does This Mean For You and Your Workforce?

The leave and tax credit provisions of the Act do not apply to larger employers with 500 or more employees. However, some of our customers are considering expanding their existing disability and leave programs to help their workforces cope with the issues resulting from the Coronavirus pandemic. To the extent a larger employer would like to voluntarily adopt some of the features of the Act, here are some options that we suggest you consider as best practices:

- Consider expanding PTO or Sick Leave to include up to 80 hours of Coronavirus-related time off following similar criteria as the Act.
- Consider updating your existing leave program to allow employees to take leave for the same or similar qualifying reasons as the Act. This approach is consistent with the

¹ Please Note: The information contained in this letter is not legal advice and should not be relied upon or construed as legal advice. This letter is for general informational purposes only and does not purport to be complete or cover every situation. Please consult your own legal advisors to determine how these laws affect you.

Department of Labor's recent guidance regarding the Coronavirus, which encourages employers to develop "flexible leave policies for their employees."

<https://www.dol.gov/agencies/whd/fmla/pandemic>.

- During any Coronavirus-related absence, if the intent is to continue payment to employees for the duration of the absence, employers should continue paying employees through their payroll. This would create a seamless benefit experience for employees and limit payroll disruptions.
- Continue monitoring federal, state, and local legislation for additional changes that could impact your obligations as an employer to provide leave and benefits to your employees. MetLife is monitoring federal and state legislation as well and will provide you with updates after they become available.
- Consider the risks of voluntarily expanding FMLA protections to employees during Coronavirus-related leaves, such as expanding the scope of your potential FMLA liability, along with the potential benefits, such as providing job-protection for your employees consistent with the Act's requirements for smaller employers.
- Consult with your legal counsel to help create a legally compliant plan that works best for you and your employees.
- **IF METLIFE ADMINISTERS YOUR ABSENCE LEAVES:** Since MetLife is your leaves administrator, we are here to assist you in updating your leaves program, should you choose to do so. Understanding that this is an evolving situation, we can share benchmarking about what other similarly situated employers have done or are considering -- and we will work with you to operationalize any changes as quickly as possible. We are here to assist you in any way we can, including the communication of any such changes to your workforce.
- **IF METLIFE ADMINISTERS YOUR STD:** While as noted above, our view is that the best practice is to handle non-disabling Coronavirus related leaves through PTO and/or leave policies. For several reasons, we do not recommend non-disabling Coronavirus related absences to be addressed under your short-term disability plan. Nevertheless, to the extent that changes you are considering may impact the administration of your STD program, we are happy to consult with you to discuss the ways in which MetLife can assist you in administering such changes. If you have any questions about the Act, feel free to reach out to any member of your Account Team.
- **IF METLIFE DOES NOT ADMINISTER YOUR LEAVES:** If you outsource your leave administration, work with your leave administrator to update your leave programs and help communicate any changes to your workforce. Your leave administrator may be able to ease the burden of implementing a new leave program during this challenging time.

Summary of the New Federal Sick Leave Requirements of the Act

Initially, the Act requires employers with fewer than 500 employees to offer sick leave to their employees for the following Coronavirus-related absences:

- An employee is diagnosed with Coronavirus and is self-isolating;
- An employee is experiencing symptoms of Coronavirus and needs to obtain a medical diagnosis or receive care;
- An employee cannot work because a public official or health care provider recommends or orders that the employee stay home due to Coronavirus exposure or symptoms;
- To care for a family member who is exposed to or has symptoms of Coronavirus based on a determination by a public official or health care provider; or
- To care for a minor child if the child's school or place of care is closed or if the childcare provider is unavailable because of a Coronavirus-related public health emergency.

Full-time employees can use up to 80 hours of sick time, while part-time employees can use proportionally less time, based on the average number of hours the employee works over a two-week period. An employee cannot carry over sick time into the next year, nor is an employee entitled to payment of unused sick time upon separation from employment. Employees will be able to use this sick leave immediately after the Act becomes effective.

During sick leave taken for the employee's own condition, employers must pay employees their regular rate of pay or the applicable minimum wage, whichever is higher. However, if the sick leave is taken to care for a family member, the rate of pay is reduced to two-thirds of the employee's regular rate of pay. Within seven days of enactment of the Act, the Department of Labor will publish a model notice that employers must conspicuously post in their workplaces. The paid sick leave under the Act must be in addition to an employer's existing sick leave policies and employers cannot scale back their existing leave policies to account for the Act. Similar to the FMLA amendments, the new sick leave proposal will become effective 15 days after the enactment of the Act and will sunset on December 31, 2020.

To help employers shoulder the financial burden of paying for these additional benefits, the Act allows employers with fewer than 500 employees to claim a tax credit equal to 100% of qualified sick leave wages paid to employees. These credits, however, are limited to \$200 to \$511 per day, depending on the qualifying leave event, subject to other conditions and limitations. The aggregate number of days taken into account per employee may not exceed the excess of 10 over the aggregate number of days taken into account for all preceding calendar quarters. These credits will effectively help employers recover all of the wages paid to employees earning up to \$132,860 in income. For employees earning above \$132,860, the Act will help employers recover some of these wages.

Summary of the Proposed FMLA Expansions

The Act may also expand FMLA to allow employees to use FMLA for the last three leave reasons mentioned above (i.e., an employee needs to stay home due to their own or family

member's exposure to or having symptoms of Coronavirus or to care for a child whose school or place of care is closed).

Although the first 14 days of Coronavirus-related FMLA leave is unpaid, employers must pay employees for up to 10 additional weeks of leave at the rate of two-thirds of the employee's regular pay rate. The 50-employee minimum applicable to current FMLA leave reasons does not apply to Coronavirus-related leaves. Rather, all employers with fewer than 500 employees must offer Coronavirus-related FMLA leave to their workforce. The job protection requirements of the FMLA also apply to Coronavirus-related leaves, but only to employers with 25 to 499 employees. Any employee who has been employed for at least 30 calendar days will be eligible for this new type of FMLA leave. These amendments will be effective 15 days after enactment and will sunset on December 31, 2020.

Similar to the sick leave requirement, the Act allows employers with fewer than 500 employees to claim a tax credit of 100% of qualified FMLA wages paid to employees, which is capped at \$200 per day and \$10,000 per quarter per employee. The FMLA tax credit is designed to help employers recover up to \$30,000 or \$40,000 in wages (depending on the enactment date) for employees earning up to \$52,000 per year. For employees earning above \$52,000 per year, the tax credit will help employers recover a portion of wages.

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