

WEBSTER, CHAMBERLAIN & BEAN, LLP | NONPROFIT ALERT

CORONAVIRUS RESPONSE LEGISLATION APPLICABLE TO NON-PROFIT ORGANIZATIONS.

The Coronavirus Disease 2019 (“COVID-19”) has significantly disrupted daily life all over the United States. In response, Congress has taken legislative action. To date, Congress has passed the Coronavirus Preparedness and Response Supplemental Appropriations Act (Phase 1) and the Families First Coronavirus Response Act (Phase 2). The Coronavirus Aid, Relief, and Economic Security (CARES) Act is pending (Phase 3).¹

The Families First Coronavirus Response Act (“Phase 2”), includes free testing for COVID-19, increased funding for unemployment assistance, and reforms for food aid, and Medicaid. However, also included in Phase 2 are a number of provisions that are applicable to non-profits if they have fewer than 500 employees. These provisions apply on April 1, 2020:

1. **Emergency Paid Sick Leave:** Phase 2 requires employers with less than 500 employees to provide employees two weeks of paid sick leave, paid at the employee’s regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period), to quarantine or seek a diagnosis or preventive care for COVID-19. It also requires payment at two-thirds the employee’s regular rate or two-thirds the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period) to care for a family member for those purposes or to care for a child whose school has closed, or childcare provider is unavailable, due to COVID-19. Paid sick leave is available immediately for use. Under the Act, “paid sick time” is calculated based on the employee’s required compensation and the number of hours the employee would otherwise be scheduled to work. For paid sick time provided to employees who must quarantine because they are sick with COVID-19 or are trying to obtain a diagnosis, employers will be reimbursed through a tax credit up to \$511 per employee per day, and \$5,110 in the aggregate. For paid sick time wages provided to employees caring for loved ones, employers will be reimbursed through a tax credit up to \$200 per employee per day, or \$2,000 in the aggregate. Self-employed individuals are also eligible for the reimbursable tax credits. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance.

The Department of Labor is given the authority to issue regulations to exempt small businesses with less than 50 employees from the requirements of providing paid sick time to employees to care for a son or daughter if a school or day care has been closed, when the imposition of such requirements would jeopardize the viability of the business as a going concern. Within 15 days of enactment, the Secretary of Labor is required to issue guidelines to assist employers in calculating the amount of paid sick time to part-time employees whose schedules vary, as well as to provide any exemptions.

¹ At the time of this update, the Senate is poised to pass Phase 3 of its COVID-19 response, which is a \$2 trillion economic stimulus package.

2. Emergency Family and Medical Leave Expansion: Phase 2 requires employers with less than 500 employees to provide up to 12 weeks of leave under the Family and Medical Leave Act. Eligible employees are those with a qualifying need related to a public health emergency who have been employed for at least 30 calendar days by the employer with respect to whom leave is requested. A “qualifying need related to a public health emergency” is one where 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. A “public health emergency” means an emergency with respect to COVID-19 declared by a federal, state or local authority. The Secretary of Labor has the authority to exempt small businesses with fewer than 50 employees from the requirements of providing leave.

Under the Act, the first 10 days for which an employee takes leave may consist of unpaid or paid leave. An employee may, but is not required to, substitute any accrued vacation leave, personal leave, or medical or sick leave (including paid sick time as described above). An employer must then provide paid leave for each day of leave that an employee takes after taking the 10 days of leave, at 2/3 the employee’s regular rate of pay. Paid leave must continue until the qualifying condition no longer exists, or after twelve (12) weeks of leave have been taken.

The amount of leave is calculated based on an amount that is not less than two-thirds of the employee’s regular rate of pay, and the number of hours the employee would otherwise be normally scheduled to work. In no event shall such paid leave exceed \$200 per day and \$10,000 in the aggregate (an employer can provide more, but the tax credit will cover only up to these amounts). If an employee’s schedule varies week per week, the employer is required to use a formula (generally a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave or the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work). There are also job restoration rights provided in this Act.

3. Refundable Payroll Tax Credit for Paid Sick and Family and Medical Leave:
Employers required to provide the above-described sick leave and expanded family and medical leave receive a payroll tax credit capped at the amounts described above. The refundable payroll tax credit for both expires at the end of this year.

Although COVID-19’s disturbance is uncertain and widespread, our Federal Government has tried to respond in a way that will both help American individuals and companies, and stimulate the economy during this time. Non-profits should review the aforementioned legislative efforts and be prepared to comply on April 1.

Phase 1 was signed into law by the President on March 6, 2020, and provides \$8.3 billion in emergency funding for federal agencies to respond to COVID-19. Phase 1 allows \$1 billion in

loan subsidies to be made available to help small businesses, including nonprofit organizations, which have been impacted by financial losses as a result of the outbreak.

Throughout this very fluid situation, we will keep you informed should other legislative or regulatory efforts impacting non-profits.

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Arthur L. Herold aherold@wc-b.com | 202-785-9500

James S. Wilson | jwilson@wc-b.com | 202-785-9500

Heidi K. Abegg | habegg@wc-b.com | 202-785-9500

David S. Lieberman | dliberman@wc-b.com | 202-785-9500

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