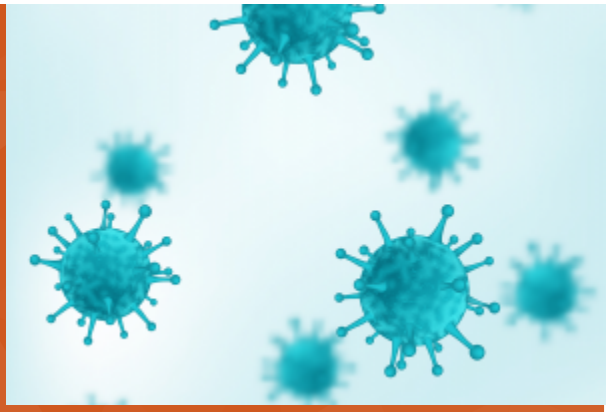
COVID-19 Alert: IRS, DOL, and Treasury Plan

IRS, DOL, and Treasury Issue Plan on Implementation of Payroll Tax Credit, Paid Leave and Other Employment-Related Provisions of the Families First Coronavirus Response Act

March 24, 2020



The Internal Revenue Service (IRS), U.S. Department of Labor (DOL), and U.S. Treasury Department issued a joint statement highlighting the employment-related provisions of the Families First Coronavirus Response Act ("the Act"), which was signed into law by President Trump on March 18, 2020 (see our previous alert on this subject here). The three departments offered a preview for small and mid-size businesses related to the implementation of these various provisions. A summary of their highlights is below.

- **DOL plans to release *regulations* relating to the Act by April**. While employers are not required to comply with the Act until *April 2*, the DOL and IRS made clear that employers, unless exempted, may begin to provide paid leave under the Act and take advantage of the available tax credits immediately. The anticipated regulations will provide further guidance on the sick and child care leave requirements of the Act.
- **DOL plans to release *emergency guidance* related to small business exemptions related to leave.** The Act provides an exemption for businesses with less than 50 employees from leave requirements related to school and daycare closings where the leave requirements would threaten the viability of the business. The DOL plans to issue guidance with "simple and clear criteria" on the qualifications related to this exemption.
- **DOL will be issuing a *temporary non-enforcement policy* to allow employers to come into compliance.** Under the temporary policy, the DOL will not bring enforcement actions against employers for violations of the Act, but instead will work with employers to assist in compliance with the Act, provided the employer has acted reasonably and in good faith.
- **The IRS will be releasing *guidance* later this week about how employers can obtain the tax credits related to providing sick or child care leave.** In short, employers will obtain the credit by withholding the amount of money equal to the cost of leave provided from their payroll taxes, rather than depositing with the IRS. If the amount withheld is not enough to cover the paid leave provided, employers will be able to file a request for payment on an accelerated basis, to be processed in two weeks or less. The IRS will release further details on the procedure in their anticipated guidance.

The Morse Employment Law team is following this, and other matters related to COVID-19 responses, and will continue to report as appropriate.