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**MEMORANDUM**

**DATE:** March 23, 2020  
**TO:** Community Bankers of Michigan  
**FROM:** Michael A. Kus   
**RE:** Families First Coronavirus Response Act

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Late last week the President signed into law the Families First Coronavirus Response Act. This is the second of what will appear to be three Acts of Congress to attempt to address the Coronavirus pandemic. The Act was passed in a bipartisan vote of the House and Senate.

There are a number of key provisions of the Act which could have a significant impact on Community Banks and specific employment issues. The areas of impact are Emergency Sick Leave, Emergency Family Leave, and Employer Tax Credits.

**EMERGENCY SICK LEAVE**

- Employers with less than 500 employees will have to provide the employees who cannot work or telework with paid sick time off if:
  - (1) an employee is subject to a Coronavirus quarantine or isolation order;
  - (2) an employee has been advised by a health care provider to self-quarantine;
  - (3) an employee is experiencing symptoms of Coronavirus and is seeking a medical diagnosis;
  - (4) an employee is caring for an individual described in (1) or (2) above;
  - (5) an employee is caring for a child whose school or daycare is closed or the childcare provider of the child is not available due to Coronavirus or is shut down by State order; or
  - (6) an employee is experiencing similar conditions as specified by the U.S. Department of Health and Human Services.

- Full time employees are to receive 80 hours of sick leave and part time workers are granted leave equivalent to the average hours worked in a two week period, with the sick leave, in either instance, being available for immediate use regardless of the employee's tenure at the employer.
- Sick time may not be carried over from year to year.
- Any wages paid under the Emergency Sick Leave provisions will not be subject to typical Social Security payroll tax paid by the employer for the employee at the rate of 6.2%.
- Employees taking leave for themselves will have to be paid at least their normal wage or the states' minimum wage, whichever is greater.
- An employee taking time off to care for a family member must be paid at two-thirds of the above.
- Sick leave is capped at \$511 per day or \$5,110 in the aggregate for leave taken for themselves (specified in (1) thru (3) described in the first bulleted paragraph above), and capped at \$200 per day and \$2,000 aggregate for leave taken as a result of (4) thru (6), in the first bulleted paragraph above.
- Employers will have to post a notice containing information regarding the Emergency Sick Leave provision. It is the intention of the Labor Department to create such a model notice that is to be provided sometime in the week of March 23, 2020.
- Employers will be prohibited from (1) requiring employees to find a replacement that will cover the hours during time off; or (2) discharging or discriminating against employees from requesting paid sick leave following a complaint against an employer related to such.
- The Department of Labor will likely provide some additional regulations related to exempting small businesses with fewer than 50 employees from the paid leave requirements when the imposition of the requirements are jeopardizing the viability of the business as a going concern.
- The provisions of the Emergency Sick Leave will take effect on or about April 3, 2020 and will expire on December 31, 2020.

#### **EMERGENCY FAMILY LEAVE**

- Employers with less than 500 employees will be required to provide up to 12 weeks family and medical sick leave for employees who have been on the job for at least 30 days, and who are unable to work or telework because the need to care for a child who is unable to attend school, or whose daycare has been closed, or the childcare provider is unable to provide service, due to a Coronavirus emergency.

- The first 10 days of leave may be unpaid. During that first 10 days an employee may opt to use other vacation or other available time available during that calendar year. For the remainder of the leave time, the employer will pay the employee at an amount equal to two-thirds their normal wages. The leave is capped at \$200 per day and \$10,000 in the aggregate.
- Wages paid under the Emergency Family Leave provision will not be subject to social security payroll tax which is paid by the employer on the employees' wages.
- An employee taking advantage of these leave provisions, upon returning to work must be restored to that person's prior position. In the event the employer has less than 25 employees, these provisions will not apply if the previous position no longer exists due to the changes in the employers operating conditions or caused by the Coronavirus pandemic and the employer attempts to put the employee back to an equivalent position.
- The Department of Labor will come up with additional regulations dealing specifically with health care providers and for employers with less than 50 employees where the provisions may jeopardize the viability of the business.
- The provisions of the Emergency Family Leave will take effect on or about April 3, 2020 and will expire on December 31, 2020.

#### **EMPLOYER TAX CREDITS**

- The Act provides employers with refundable credit payments made to its employees under the Emergency Sick Leave and the Emergency Family Leave provisions.
- The credits will be provided from the employer portion of the Old Age, Survivors, and Disability Insurance Act for wages paid to employees for time off.
- Employers will be able to take credit for each employee that takes sick leave and will be capped at \$511 per day per employee, or \$200 if caring for a family member or child whose school has closed. Credit will be limited to 10 days per employee. Employers will be able to obtain credit under the Emergency Family Leave for an employee's wages for an employee who has taken Family Leave for as much as \$200 per employee per day and \$10,000 in the aggregate.
- The Department of Treasury will be providing additional regulations regarding this relating to the credits. These provisions will also take effect on or about April 3, 2020 and end on December 31, 2020.

Additional guidance and regulations will be forthcoming from the Department of Labor. Also, the Act provides for additional unemployment insurance with the Federal Government fully funding the additional time provided for under the Act for employment insurance. The

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unemployment insurance extension appears to be 26 weeks but further clarification will be provided in the near future.

As additional information is provided, we will try and update and keep you current with any further clarification or additional provisions.