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Inside this Issue

MORE ON CORONAVIRUS

As many of you have probably heard this week (as this is written on March 23rd) already, the President signed into law on March 18, 2020 the Families First Coronavirus Response Act. The law has two aspects that we will discuss herein:

First, the law expands, for the rest of 2020 only, the rights, benefits and obligations of the Family and Medical Leave Act. It adds the temporary right to use an employee's FMLA time in the event they become unable to work (or telework) because the employee has a child under 18 whose "school or place of care has been closed" or whose child care provider is "unavailable" due to any declared emergency related to COVID-19. Thus, the law applies to not only school closures but also day care center closures or individual childcare providers' unavailability. The first ten days of such leave may be unpaid, but thereafter it must be paid leave payable by the employer. (Unlike our relatively new Washington State Paid FMLA, this money is not payable by the State, as it must be paid directly by the Employer.)

The benefit amount is 2/3 of the employee's regular rate of pay, but capped at $200 per day and $10,000 in the aggregate.

Any employee employed at least 30 days can take advantage of this new temporary benefit.

Congress empowered the Department of Labor to issue regulations in two specific areas: (1) a regulation may be issued to allow exclusion of health care workers and emergency responders from this new benefit and (2) small businesses may also be exempt if they have fewer than 50 employees "when the imposition of such requirements would jeopardize the viability of the business as a going concern."

We are not certain why Congress felt it necessary to suggest that first exclusion regulation. Nor are we clear yet on Section 3105 of the Act, which provides that an employer of those types of employees—who are on the front lines of fighting the coronavirus outbreak—"may elect to exclude such employee" from the benefit provisions of the Act.

This law applies to all employers with fewer than 500 employees. It remains to be seen whether even a limited small employer exemption will be possible. We assume for purposes of this article that all fire district and RFA employers in Washington will provide these benefits for all employees, including emergency responders, regardless of employer size. The law does not apply to bona fide volunteers by the way.

The second part of the law—in Division E—is an Emergency Sick Leave Act. For the first time, in addition to federal employees, all eligible employees in the private sector and employees of state and local governments, will be entitled to limited and temporary sick leave, **if certain conditions are met.**

Here are the specific COVID-19 situations that apply to provide the sick leave:

- The employee is subject to a quarantine or isolation order related to COVID-19 or is caring for someone who is subject to such an order;
- The employee has been advised by a health care provider to self-quarantine due to COVID-19 concerns or is caring for someone who has been so advised;
- The employee is experiencing symptoms of COVID-19 and seeking diagnosis;
- The employee is caring for a child whose school or place of care has been closed, or whose childcare provider is unavailable, due to COVID-19 precautions;
- The employee is experiencing "any other substantially similar condition specified by the Secretary of HHS in consultation with the Secretary of the Treasury and the Secretary of Labor."

Full-time employees get a bank of 80 hours (equal to 10 days) and part-time employees get a pro-rated amount based on their average hours worked "over a two-week period."

Again, this law takes effect April 2, 2020 and sunsets on December 31, 2020.

Lest our clients and other fire service employers in the State become too concerned about this unfunded mandate, and how it and the pandemic may affect their financial affairs and solvency, we learned today about an important guidance issued by the IRS last Friday. Stay tuned but here is what we think the guidance means:

Congress did provide in the bill that employers would be entitled to tax credits and that there could be full, 100% reimbursement from the federal government for these new employee benefits.

However, as many taxpayer-employers and commentators pointed out, it might be a year or more before a tax credit for such expenditures would be realized and by that time many small employers might become insolvent or be very damaged financially. Hence, the IRS has issued the following guidance, as of last Friday:

The employer who incurs new expenses due to this new law, by paying for family, child care or employee COVID-19 leave, for any reason so specified, would be entitled to simply deduct from their next payroll tax submittal the full amount of any such benefits paid out during the recent payroll. For example, let us suppose you paid out $1,000 in these new types of family leave or sick leave benefits in April. When you prepare your payroll taxes for that pay period, you will be able to offset all of your costs. As long as your total payroll taxes (**and by that I mean all income tax withheld from all employees salary or wages, *and* both the employee's and the employer's share of Social Security and Medicare, if any)** amount to at least the amount of benefits paid out, you can offset and credit that amount against your tax due. Feel free to check out the IRS guidance of last Friday and see for yourself.[1] If I am not mistaken that will make the new law cost-neutral for most of you.

It is impressive (at least to me) that the IRS or someone in the federal government found a way to make the relief immediately available.

While it may seem today that Congress and the Executive Branch are flailing around in disputes about "bailouts" for large corporations, it does seem that some progress is being made, at least with respect to the financial impacts of COVID-19.

PROPOSED LEGISLATION

There is another important bill working its way to the Governor's desk that we did not mention in last month's article. Substitute Senate Bill 6415 would enhance the value to fire departments of the Benefit Charge currently allowed to fire districts under Chapter 52.18 RCW and to RFA's under Chapter 52.26, by adding options for a ten-year benefit charge or even a **permanent** benefit charge.

[1] https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus

Under this law, the original imposition of a six-year or a ten-year benefit charge requires sixty percent voter approval, but "continued imposition" (sometimes called a renewal) of either of those needs only a simple majority. Furthermore, a **permanent** benefit charge is an added option, and that always requires 60% approval. None of these 60% supermajority elections appears to require "validation" as we must do with excess levy elections.

As you should know, if the benefit charge is approved by the voters, you cannot levy the "third fifty cents" so your property tax rate tops out at $1.00 per thousand of assessed valuation if you have the benefit charge. Also, the benefit charge collection, in total, cannot exceed 60% of your total budget revenue.

Our clients who have the benefit charge already report that it gives them a safety valve when the 1% lid on property tax increases is causing them some hardships with revenue growth, when faced with inflation in prices. It also provides some diversification in revenue streams badly needed by fire districts, which rely unduly on the property tax for 95% or more of their income. This is especially true in a recession (which we will see again soon) because property values may drop but the benefit charge is not driven by property values at all, in distinction to ad valorem property taxes.

Let us hope the Governor signs this necessary bill.