



MEMORANDUM

To: Northern California Union Contractors Council

From: Brendan Carter – AGC of CA

Re: Families First Coronavirus Response Act

Date: March 21, 2020

Latest on New Federal Paid Leave Mandates

Earlier this week after the passage of the *Families First Coronavirus Response Act* (Act), AGC of CA shared with the Council the preliminary concerns it had heard from members. AGC of CA has determined some answers to those questions as well as received additional clarifications today from AGC of America on the Act. AGC of CA thought it best to get those to the Council ASAP as it is clear this is an important issue for our signatory members.

1. No Exemption for Collectively Bargained Agreements

There are no exemptions for employers and employees engaged in collectively bargained agreements nor does the Act run counter to any NLRA provisions that would deem it unenforceable in a collectively bargained relationship.

2. Small Business Exemption

The Act allowed for the Secretary of Labor to exempt small businesses with fewer than 50 employees from the family leave requirements relating to school closings or childcare unavailability if such leave would hinder the company's ability to stay in businesses. The DOL has elected to utilize this exception and it will be releasing clear and simple criteria for small businesses to use in determining whether it qualifies. Once this DOL guidance is available the AGC of CA will notify and distribute to the Council.

3. Paid Leave Tax Credit

The DOL will be releasing a guidance next week for the paid leave's tax reimbursement mechanism which will be quarterly payroll taxes including federal income taxes, an employee's share of Social Security and Medicare, and the employer's share of Social Security and Medicare withholdings. There is also the availability to apply for an additional accelerated payment from the IRS if there are insufficient dual withholdings to cover the cost of the leave. The IRS anticipates these accelerated payments to be processed in two weeks.

4. Existing Trust Funds Cannot Pay for Leave

Based upon a preliminary reading of the Act and the specific inclusion of language that references multiemployer funds, the AGC of CA had hoped the existing trust funds might be able to shoulder some of the paid leave burden.

Unfortunately, after a more thorough review of the Act by AGC of CA labor counsel, it was determined there is no mechanism for the trust fund to receive or recoup the paid leave funds given to an employer through an employer tax credit. AGC of CA will continue to discuss this topic with its labor counsel and fund trustees to see if there is any way possible to accommodate, but at this time AGC of CA would recommend Council members plan to fund paid leave through their own quarterly tax withholdings as identified in No. 3.

5. No Lookback Period for Applicability

The Act is to go into effect on Thursday, April 2nd and there is no lookback window for employees to claim leave benefits against an employer. In order to be eligible, an employee must be employed by an employer on April 2nd and have been for the prior 30 days.

6. Non-Enforcement Period

The DOL will have a 30-day non-enforcement period starting on April 2nd where it will allow for employers to come into compliance. No enforcement actions will be instituted provided an employer acted reasonably and in good faith.

The IRS and Treasury have provided a website for further information which the AGC of CA highly recommends you review or pass along to the appropriate member of your organization.

<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>