As we previously blogged, last week Congress passed and the President signed into law the “Families First Coronavirus Response Act,” which contains sweeping provisions requiring employers with fewer than 500 employees to provide emergency paid sick leave and emergency leave under the Family and Medical Leave Act (FMLA) to employees impacted by in specific, enumerated ways by the novel coronavirus (COVID-19). By its terms, the FFCRA will go effect no later than April 2, 2020.

The speed with which the FFCRA was drafted and adopted left many employers with important questions, which the US Department of Labor (DOL) indicated at a March 20 virtual town hall it would address through emergency regulations, without resort to ordinary notice-and-comment rulemaking in the interest of time. Employers anxious for the DOL’s regulations hoped this guidance would be available by March 25, which is the date under Section 5103(b) of the FFCRA that the Secretary of Labor is to make public the model notice that employers will be required to post in workplaces advising employees of their rights under the FFCRA. But, disappointingly, the DOL indicated today (March 23) on its webpage describing the requirements of the FFCRA – in a footnote no less – that FFCRA regulations are “expected APRIL 2020” (emphasis ours).
If indeed the DOL does not issue regulations under the FFCRA until the day before or the same day the law goes into effect, or worse, after the effective date, employers will be left scrambling to make last-minute adjustments to policies and practices intended to implement the law’s requirements. Hopefully the DOL will issue its regulations – or at least make a draft of them public – sooner than April so that employers have some guidance as they attempt to navigate these uncharted waters. We will keep you updated with all relevant developments.

© Copyright 2020 Squire Patton Boggs (US) LLP