The Families First Coronavirus Relief Act (the Act) was passed on March 18, 2020 and imposes paid leave obligations on most employers throughout the country. The bill contains special and often overlooked provisions affecting public agencies. Those provisions could provide a “trap” for public agencies that do not carefully review the bill.

**Definition of “public agency.”** A “public agency” is defined broadly to include the government of the United States; the government of a state or political subdivision of a state; or an agency of the United States, a state, or a political subdivision of a state, or any interstate governmental agency.

**Application of employee threshold.** For purposes of the law’s paid leave obligations, a covered employer in the private sector includes any employer with fewer than 500 employees. This threshold does not apply to public agency employers. Public employers with only one employee are covered by the bill’s paid leave provisions, meaning large public employers with more than 500 employees are covered by the paid leave provisions.

The FMLA expansion, however, does not appear to apply to public employers with more than 500 employees, meaning that large public employers are covered by part
of, but not all of, the bill’s new leave provisions.

**Application of exemption for employers with fewer than 50 employees.** Under the bill, employers with fewer than 50 employees do not have to provide leave to employees who take care of children because of a school closure or unavailability of child care provider, if providing leave would jeopardize the business as a going concern. These provisions do appear to apply to public agencies as the Act does not appear to distinguish between a public and a private employer in that regard.

**Availability of tax credits.** If a covered employer provides leave under the bill, the employer is eligible for a dollar-for-dollar refundable tax credit offset against payroll tax liability in the amount of the paid leave provided. Public agencies are not eligible for the tax credits, and therefore must provide the paid leave without any corresponding deduction against payroll tax. Note that some public agencies are exempt from paying the Social Security portion of payroll (FICA tax), while some public agencies are not exempt from such taxation. The bill does not differentiate between the two types of public employers, and imposes a “blanket” exclusion on all public agencies.

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