

Considering a Layoff or Furlough? Be Aware of Pending Legislation That May Change Your Assessment

By Jessica Summers

As we previously reported, on March 18, 2020, Congress passed, and the President signed, the Families First Coronavirus Response Act (“FFCRA”) which provides paid leave for certain employees who need to be out for qualifying reasons because of the COVID-19 public health emergency. **Now, Congress is considering additional legislation that could have serious implications for employers who are contemplating a potential layoff or furlough of employees.**

Late Thursday, Senator McConnell introduced the CARES Act (S. 3548). There is still negotiating to be done with Democrats before the bill has any chance of passage in the House and Senate. However, as currently drafted, the bill would, among many other things, provide for fee-free loans of up to \$10 million for employers with under 500 employees to help them cover payroll, mortgages, rent and other specified expenses. As currently drafted, the bill would further allow businesses that retain their employees and payroll levels between March 1, 2020 and June 30, 2020 to have any part of such loan that was used to cover payroll through that period forgiven entirely (to the extent that employees or payroll levels are reduced, loan forgiveness would be proportionately reduced). The exception to this would be that anything paid to a single employee over \$33,333 during the three month period or any payments for leave established by the FFCRA, for which the employer would be receiving a tax refund, would not be eligible for loan forgiveness.

Again, there is still negotiation to go and it remains to be seen what the loan application and approval process would look like and how quickly employers would be able to access such loans if the bill is passed with these provisions. That said, for employers considering layoffs or furloughs in the coming days who are financially able to delay such decisions a little longer, such legislation could seriously impact the calculus and decision making and is certainly something to watch.

If you have questions regarding how to handle leave issues during the current spread of the Coronavirus, please contact the employment attorneys at Paley Rothman.