MEMORANDUM

TO: Jack Morrissey, NJCM Executive Director

FROM: Steven S. Glickman, Esq.
       General/Labor Counsel

RE: Families First Coronavirus Response Act (“Act”)

DATE: March 19, 2020

Yesterday, the President signed the 2nd version of the Families First Coronavirus Response Act. The Act is required to take effect not later than 15 days after the date of enactment, so all municipalities should begin preparing to implement the appropriate provisions of this Act as soon as possible.

EMERGENCY PAID SICK LEAVE ACT

One aspect of the Families First Coronavirus Response Act (“Act”), the Emergency Paid Sick Leave Act, applies to all municipalities and provides for paid sick leave in addition to paid sick leave provided through Civil Service, policy, or collective bargaining agreement. The municipality cannot require
employees to utilize other paid leave before using the paid leave provided by this section.

Municipalities are required to provide all full-time employees with 80 hours of paid sick leave, although “full-time” is not defined in the Act. Part-time employees are entitled to the number of hours of paid sick time equal to the average number of hours they work over a 2-week period.

When an employee is out related to his or her own condition, pay is at the employee’s regular rate of pay, limited to $511 per day and $5,110 total.

When an employee is out related to the employee’s role as a caregiver, pay is at 2/3 of the employee’s regular rate of pay, limited to $200 per day and $2,000 total.

The employee does not necessarily need to be sick to be eligible for the Emergency Paid Sick Leave. The Act identified the eligibility circumstances as follows:

a. The employee is subject to a Federal, State or local quarantine or isolation order related to COVID-19;

b. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

c. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

d. The employee is caring for an individual who is subject to an order as described in (a) or has been advised as described in paragraph (2);

e. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has
been closed, or the child-care provider of such son or daughter is unavailable, due to COVID-19 precautions; or

f. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

It is critical to note that the Act provides that “An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this subsection”. While there is no definition of “emergency responder”, the municipality may want to consider this provision as being applicable to all essential personnel, i.e. police, fire, ambulance, etc.

**EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT**

As this Act implies, the Family and Medical Leave Expansion Act expands the provisions of the FMLA by adding a “public health emergency” provision. While adding a new basis for FMLA eligibility, it does not increase the amount of leave that can be taken, which is 12 weeks over a 12-month period.

All employees who have been employed for at least 30 days are eligible for this leave, unlike the other provisions of the FMLA. The Act provides for leave if an employee must care for their child under 18 years of age because the child’s school (or place of care) has been closed or the child-care provider is unavailable related to a COVID-19 emergency as declared by a Federal, State or local authority.
The Act indicates that the first 10 days of public health emergency FMLA leave may be unpaid, but employees may elect to substitute accrued paid leave during this time, including paid sick leave pursuant to the Emergency Paid Sick Leave Act. Thereafter, employers are required to provide paid leave not less than two-thirds of the employee’s regular rate of pay for the remainder of the period of public health emergency FMLA leave period, up to 12 weeks (as needed), capped at $200 per day and $10,000 total.

4. As with the Emergency Paid Sick Leave Act, health care providers or emergency responders may be excluded and the City may want to consider this provision as being applicable to all essential personnel, i.e. police, fire, ambulance, etc.

The text of the final version of the bill is at the following link: