

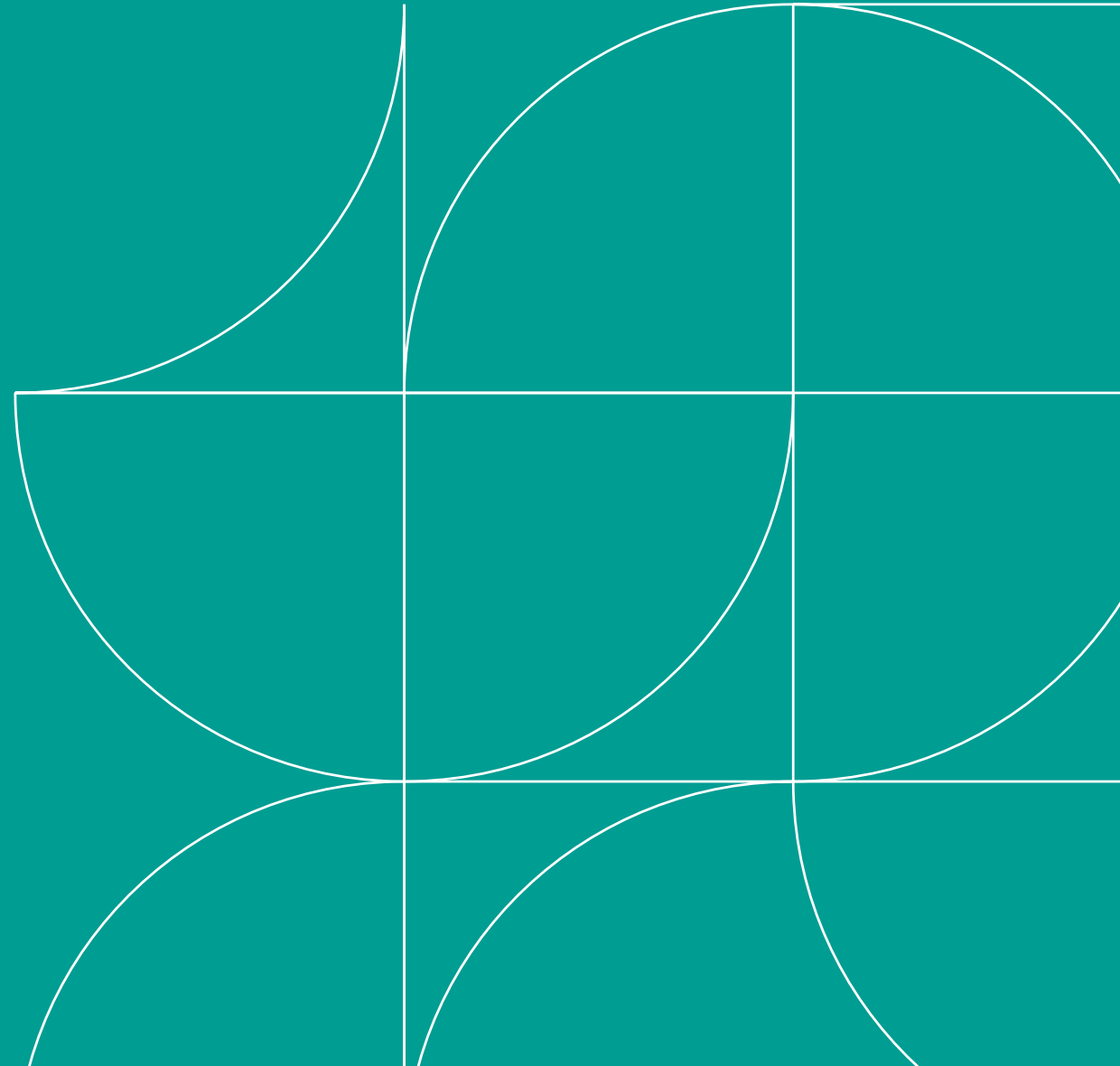


Families First Coronavirus Response Act – Initial Analysis

March 19, 2020

Seyfarth Shaw LLP

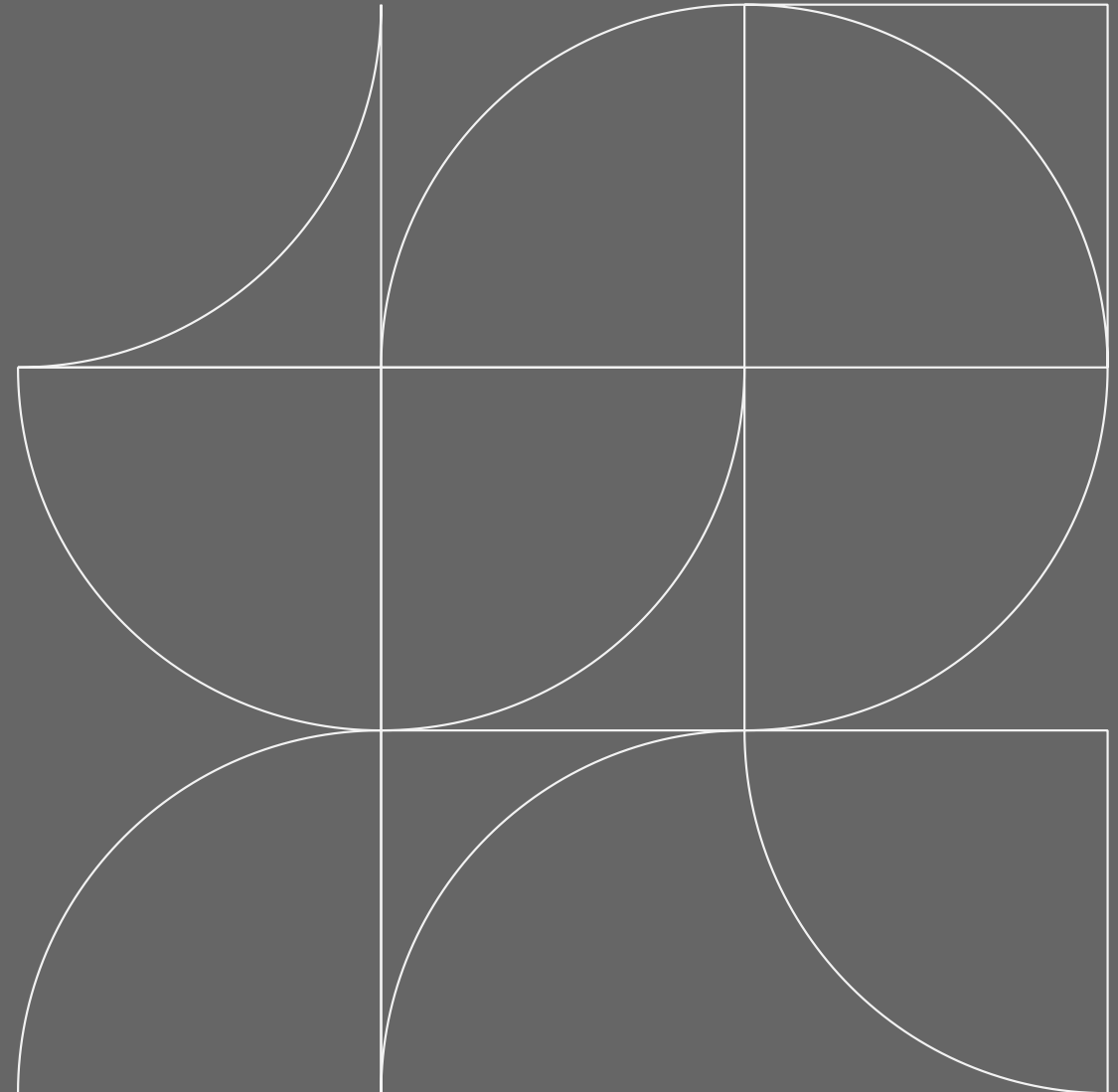
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Agenda

- 01** Families First Coronavirus Response Act Overview
- 02** Emergency Family Leave and Medical Expansion
- 03** Emergency Paid Sick Time
- 04** Tax Credit
- 05** Unemployment Compensation

Families First Coronavirus Response Act Overview



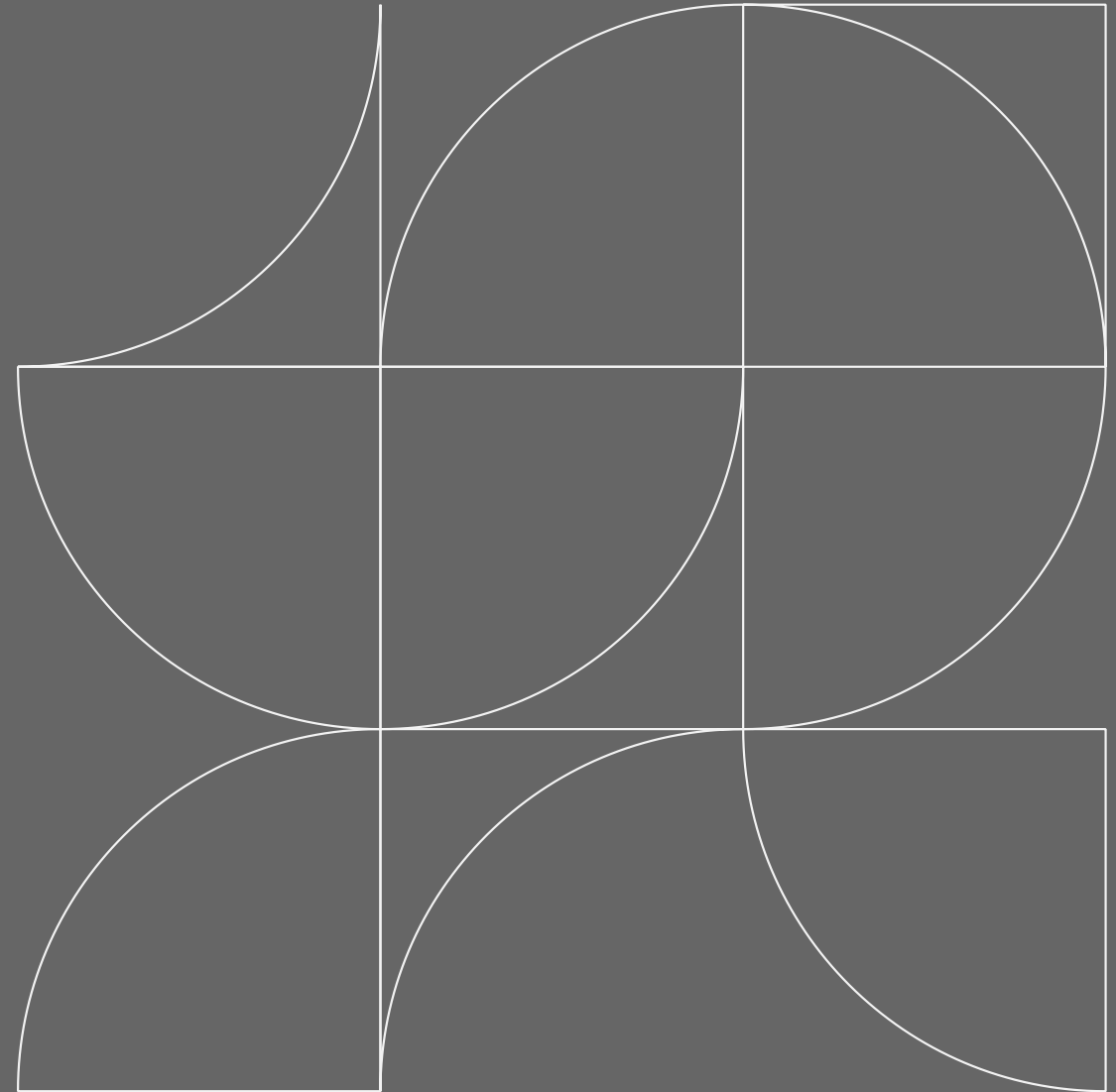
Families First Coronavirus Response Act Overview

- Act was introduced on 3/11/2020
- House passed H.R. 6201 early morning 3/14/2020
- House issued “technical corrections” to H.R. 6201 on 3/16/2020
 - Did not impact all sections of the Act
- Senate passed H.R. 6201 on 3/18/2020 without changes
- President signed Act on 3/18/2020
- Act goes into effect 15 days after being signed into law (i.e., April 2, 2020)

Families First Coronavirus Response Act Overview (con't)

- FFCRA has many provisions related to addressing the COVID-19 crisis.
- Highlights Include: (a) paid family and medical leave (PFML), (b) paid sick time (PST), (c) tax credits for PFML and PST, (d) unemployment insurance, (e) medical plan components and (f) several immediate public health related matters.
- PFML and PST Mandates:
 - Sunset on December 31, 2020
 - Only apply to private employers with ***fewer than*** 500 employees
 - PST available for broader reasons than PFML
 - Tax credits available to offset costs to covered employers

Emergency Family and Medical Leave Expansion



Paid Family and Medical Leave

- Expands the FMLA: Adds a new qualifying absence to the FMLA for “public health emergency leave” that is paid
 - Limited scope of what absences are actually covered
- Employer coverage – Does **not** apply to employers that employ 500 or more employees
 - Potential regulatory exemption for small employers
- Employee Eligibility - An employee who has worked for a covered employer for at least 30 calendar days
 - Standard is **not** regular FMLA criteria

Paid Family and Medical Leave (con't)

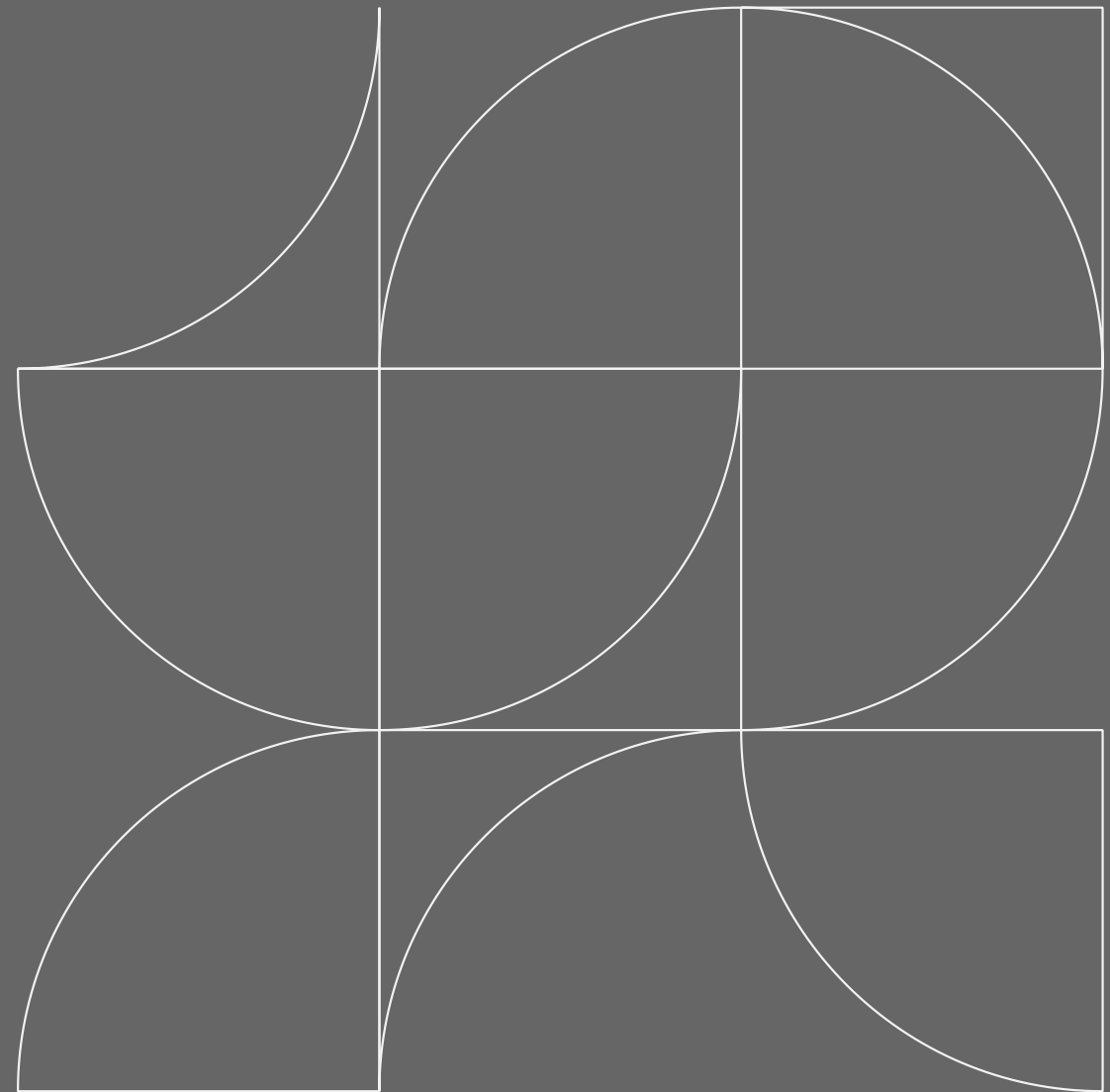
- **Consists of Paid and Unpaid Portion**

- Employers must provide paid leave after 10 days of unpaid leave
- Employee may substitute other leave benefits during initial period;
Also can receive paid sick time under the Act
- After 10-day period, employee can receive up to 10 weeks of leave
- Pay = Not less than two-thirds of “regular rate” (FLSA)
multiplied by # of hours normally scheduled
- Capped at \$200 per day and \$10,000 total

Paid Family and Medical Leave (con't)

- Employee must provide advanced notice of foreseeable leave as soon as practicable
- Reinstatement rights
 - Potential exception for employers with less than 25 employees, due to negative business or operational changes
- No CBA exemption; Special rules under multi-employer bargaining agreements
- Silent on whether intermittent leave is permitted
- Quarterly tax credits to offset employer payments (will discuss in a few slides)

Emergency Paid Sick Time



Paid Sick Time

- Employer coverage – Does **not** apply to employers that employ 500 or more employees
 - Potential regulatory exemption for small employers regarding certain covered reasons for use
- Employee Eligibility – Broader than PFML; “Employee” generally means any individual employed by an employer.
- No CBA exemption; Special rules under multi-employer bargaining agreements

Paid Sick Time (con't)

- Qualifying conditions – Employee is unable to work or telework because:
 - 1) The employee is subject to a governmental ***quarantine or isolation order*** related to COVID-19
 - 2) The employee has been advised by a health care provider to ***self-quarantine*** due to COVID-19 concerns
 - 3) The employee is experiencing ***symptoms*** of COVID-19 ***and seeking diagnosis***

Paid Sick Time (con't)

- Qualifying conditions – Employee is unable to work or telework because (con't):
 - 4) The employee is ***caring for an individual*** subject to a governmental quarantine/isolation order or health care provider recommendation
 - Does ***not*** need to be a family member
 - 5) The employee is caring for an eligible “son or daughter” under age 18 if school or place of care has been closed due to COVID-19 precautions
 - 6) The employee is experiencing any other “***substantially similar condition***” specified by HHS Secretary

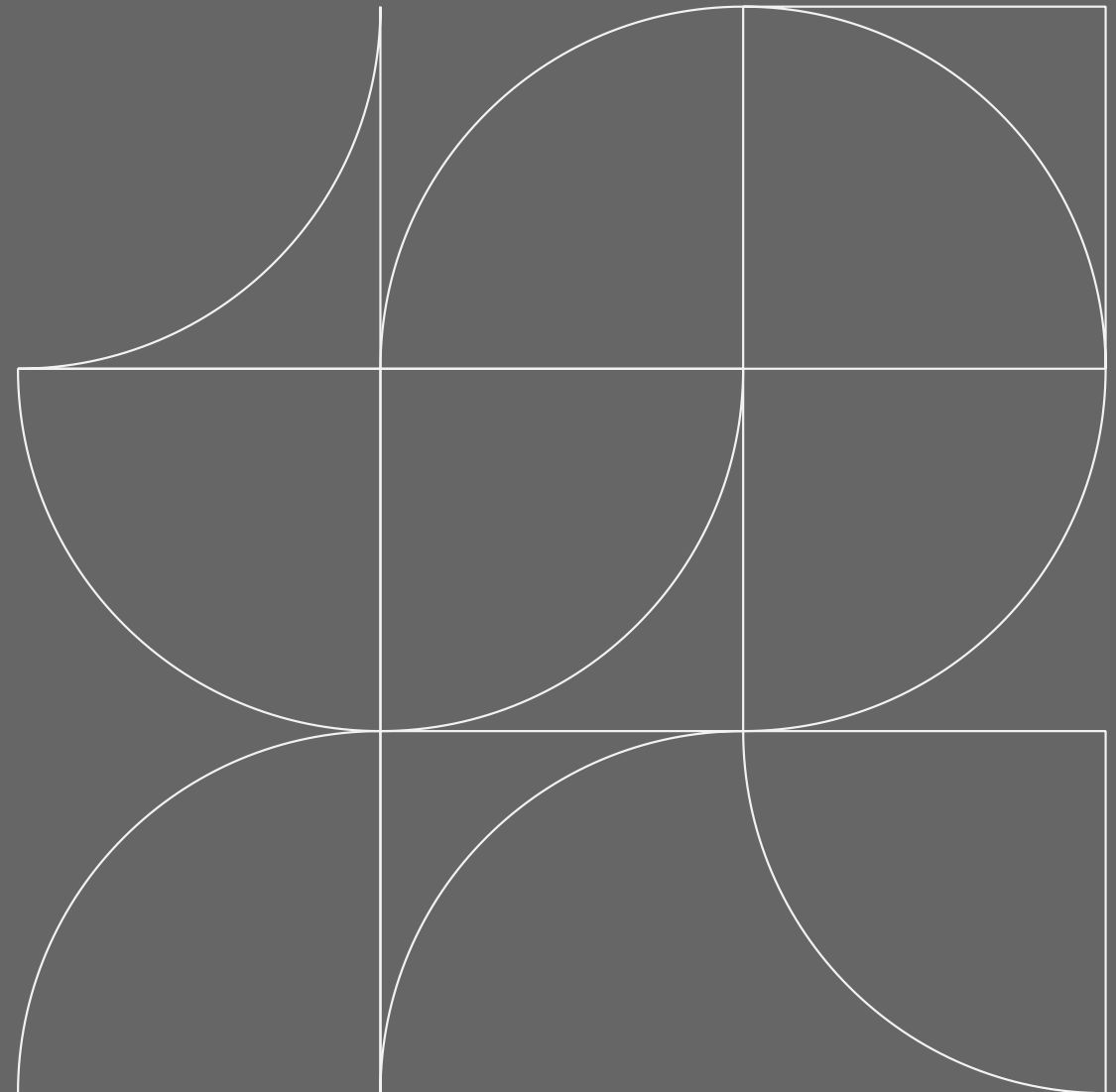
Paid Sick Time (con't)

- Full-time → 80 hours of pay
- Part-time → Average # of hours over two-weeks
- Pay set at highest of:
 - Employee’s “regular rate” (FLSA);
 - Federal minimum wage rate; or
 - State or local minimum wage rate; unless...
 - ...absence for is or reasons 4), 5), or 6) → two-thirds
- Capped at \$511 per day and \$5,110 total (or \$200/\$2,000)

Paid Sick Time (con't)

- Employees immediately eligible to use paid sick time
- Employers cannot require use of company-provided paid time off before an employee uses sick time under the Act
- No year-end carry-over
- No payout on termination or separation
- Employers cannot require employees to find replacements
- Posting obligation – model notice is forthcoming
- Anti discrimination, discipline and discharge provision, although limited scope

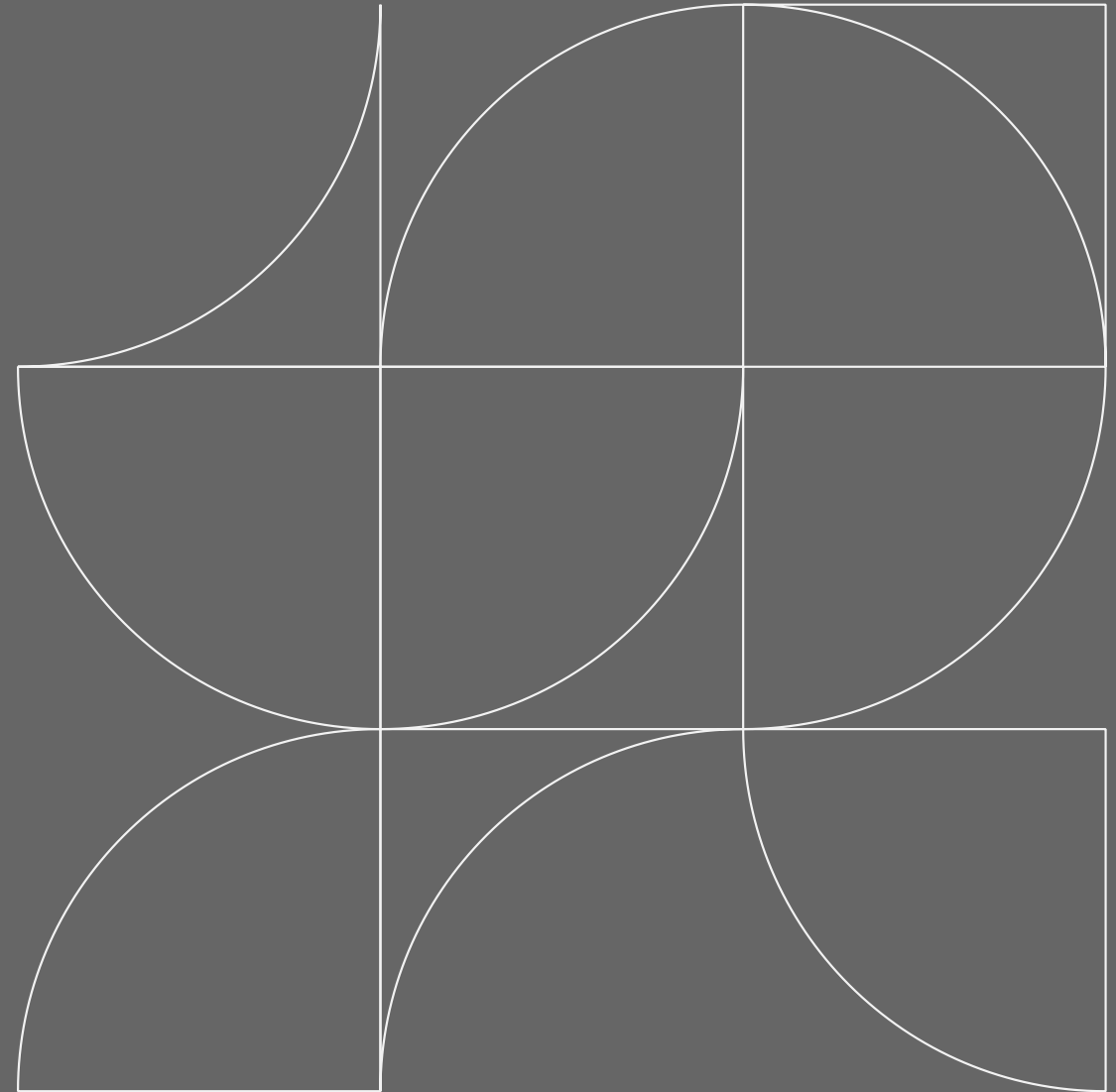
Tax Credit on Paid Family Medical Leave and Paid Sick Time



Tax Credit

- **Overall** – Tax credits are intended to offset the cost of providing the paid leave now required of these smaller businesses
- **PST Tax Credit** – Employer can claim a credit against the employer's portion of social security tax for a calendar quarter in an amount equal to Emergency Paid Sick Leave Act wages paid by the employer during such quarter plus corresponding qualified health plan expenses.
- **PFML Tax Credit** – Credit is essentially the same as the credit for Paid Sick Leave Act wages, with a few substantive differences.
- There are some limitations on both credits
- Opportunity for employer to receive refund from government in certain situations

Unemployment Compensation



Unemployment Compensation

- Waiting Period waived
- No requirement for employee to search for employment

Questions?

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Thank You!

