



COVID-19, EMERGENCY PAID LEAVE, AND EMPLOYMENT RESTRUCTURING ISSUES

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AGENDA FOR TODAY

- COVID-19 Health and Safety Issues
 - Workplace Issues
 - Remote Working
 - Federal, State and Local “Stay at Home” and “Come to Work” Issues
- New Emergency Paid Sick Leave Laws
 - Emergency FMLA
 - Emergency Paid Sick Leave
- Employment Issues Associated with Layoffs, Furloughs, and Pay Reductions

COVID-19

- Global Pandemic
- Federal, State and Local Orders and Requirements
 - Critical Infrastructure Exceptions
- Employment Issues
 - Medical Inquiries
 - ADA and FMLA
 - Inquiries
 - Temperature Testing
 - HIPAA Issues
 - Work from Home
 - Safety
 - Information Security
 - Monitoring of Work
 - Requiring Employees to Report to Work
 - Essential Businesses and Essential Services Exceptions
 - Beware: E-FMLA and EPSL
 - Establishing Safe Work Practices – Social Distancing, Cleaning and Hygiene Issues

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

- Two Laws of Interest to Employers:
 - Emergency Family and Medical Leave Extension Act (E-FMLA)
 - Emergency Paid Sick Leave Act (EPSL)
- Effective Date for DOL = April 1, 2020
- Apply to Employers With <500 Employees
 - Consider Joint Employer / Single Enterprise Issues
 - FMLA Economic realities Test:
 - Power to hire and fire the employees,
 - Supervision and control of employee work schedules or conditions of employment,
 - Determination of rate and method of payment, and
 - Maintenance of employment records
 - FLSA Integrated Employer Test
 - Common management;
 - Interrelation between operations;
 - Centralized control of labor relations; and
 - Degree of common ownership/financial control

EMERGENCY FMLA LEAVE (E-FMLA)

- Applies to Employees with 30+ days of Service
- Employee Must be Unable to Work or Tele-Work to Care for Child Due to Closure of School or Unavailability of Child Care Provider Due to Public Health Emergency
- Up to 12 Weeks of E-FMLA Leave
 - First two weeks are unpaid (but employee can substitute EPSL or PTO)
 - Next ten weeks are paid – 2/3 of employee's regular rate and normal hours, capped at \$200 per day and total of \$10,000
- E-FMLA Leave Counts Toward Total FMLA Use and Entitlement
- Employees Have Reinstatement Rights
- Employer Gets Tax Credit for Mandated Payments
- No Harassment, Discrimination or Retaliation
- Employer Must Issue Policy
- Need to Use New Request/Notice Forms – Like FMLA

EMERGENCY PAID SICK LEAVE (EPSL)

- All Employees Immediately Eligible
- Up to 80 Hours of Paid Sick Leave Benefits
 - Full-time employee = 80 Hours
 - Part-time employee = two week average hours
- The Amount of Benefit Depends on Reason for Absences
 - Categories 1-3 = reg rate of pay, normal hours, capped at \$511 per day and \$5,110 total
 - Categories 4-6 = reg rate of pay, normal hours, capped \$200 per day and \$2,000 total

EMERGENCY PAID SICK LEAVE (EPSL)

- Employee Qualifies for EPSL, if:
 1. subject to a federal, state or local quarantine or isolation order related to COVID-19;
 2. advised by a health care provider to self-quarantine due to COVID-19 concerns;
 3. experiencing COVID-19 symptoms and seeking medical diagnosis;
 4. caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
 5. caring for the employee's child, if the child's school or place of care is closed or the child's care provider is unavailable due to a public health emergency; or
 6. 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.

EMERGENCY PAID SICK LEAVE (EPSL)

- Employee Can Choose to Use EPSL or PTO in Whatever Order
- Employer Can Require Employee to Verify/Certify Need for EPSL
 - We recommend using a standardized request form
- EPSL Does Not Carry Over Like Regular Sick Leave Might (Check Your Policies)
- Employer Must Post a Notice (and Needs to Update Policy)
- Employer Can Require Employee to Follow Company's Call-In and Absence Reporting Policies
- No Harassment, Discrimination, or Retaliation

EMPLOYMENT ISSUES ASSOCIATED WITH LAYOFFS, FURLOUGHES, AND PAY REDUCTIONS

- Remember WARN and State Equivalents
 - Some states have waived WARN notice for COVID-19-related furloughs and layoffs
 - WARN may be triggered by plant closings, layoffs, significant reductions in work hours
 - Temporary layoffs/furloughs intended to be less than 6 months may not trigger
- Furloughs and Layoffs
 - Remember exempt salary basis rules – generally must pay full salary if exempt employee works part of week
 - Some companies ≤ 500 Ees are furloughing and laying off before April 1 to avoid E-FMLA and EPSL obligations for non-essential employees
 - During temporary layoffs and furloughs:
 - Must direct employees not to work
 - Shut off access to email
 - Reroute email and calls
 - In some states, temporary furlough/layoff triggers vacation payout obligation

EMPLOYMENT ISSUES ASSOCIATED WITH LAYOFFS, FURLOUGHS, AND PAY REDUCTIONS

- Temporary Pay Reductions
 - Remember salary basis test for exempt employees
 - Check for employment contracts and contractual triggers
 - Check benefit plans, as pay reductions will likely reduce benefits tied to wages
 - Be careful with promises to “repay” or “catch up” reductions at later date
- Conversion of Exempt Employees to Hourly, Non-Exempt

QUESTIONS AND CONTACTS

The contents of these materials have been presented for educational purposes and should not be relied upon as specific legal advice relating to unique facts or circumstances. The issues and legal standards discussed continue to develop.

For a **copy of these slides**, please email **mjohnson@stuartpc.com**.

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