



BKS
PARTNERS
INSIGHT BEYOND INSURANCE

THE EMPLOYEE BENEFITS CONSIDERATIONS FOR COVID-19

INSIGHT BEYOND INSURANCE WEBINAR SERIES

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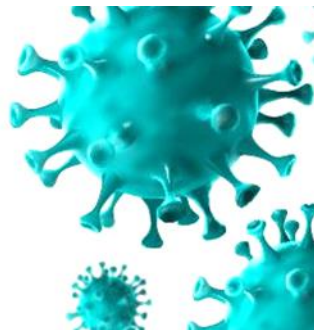


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AGENDA

- COVID-19 exposure in the workplace
- Top questions regarding the FFCRA answered
- Cost saving employment options
- Effect of these issues on benefits

COVID-19
2019-NCOV
NOVEL CORONAVIRUS
NCP



COVID-19 EXPOSURE IN THE WORKPLACE

STEPS TO TAKE IN THE EVENT OF A POSITIVE TEST

- Notify the CDC and local health authorities
- Instruct the employee to stay home – at least 14 days
- Require doctor's note to return to work
- Sick Leave and FMLA (if eligible)
- Ask the employee where he/she has been
 - Follow CDC safety/cleaning guidelines
 - At a minimum – deep clean those areas
 - Better – shut down and hire a specialty cleaning company
- Employee confidentiality
 - Notify specific employees
 - Notify the rest
 - Notify public?



STEPS TO TAKE IN THE EVENT OF A REPORT OF “CLOSE PROXIMITY” OR SYMPTOMS

- Instruct the employee to stay home – at least 14 days
- Require test or at least doctor’s note to return to work
- Sick Leave?
- Ask the employee where he/she has been
 - Deep clean those areas
 - Shut down?
- Employee confidentiality – see above

TOP QUESTIONS REGARDING THE FFCRA ANSWERED

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

- Requires job protected, mostly paid leave for certain coronavirus related circumstances
- Applies to all employers with *less than 500 employees*
- 2 types of leave:
 - **Emergency Paid Sick Leave** for coronavirus-related quarantines and childcare issues – capped at **80 hours**
 - **Expanded FMLA** for coronavirus-related childcare issues – up to **12 weeks** job-protected leave, with mixture of unpaid and paid
- “Paid for” by employer tax credits – may be able to apply earlier than expected
- Possible individual liability
- DOL says effective April 1st – not retroactive
- Until December 31, 2020

COUNTING EMPLOYEES UNDER FFCRA

- Only applies to employers with less than 500 employees
- Can different entities “aggregate” to exceed threshold?
- Expanded FMLA leave – FMLA tests -“Integrated Enterprise”
 - Interrelation of operations
 - Common management
 - Centralized control of labor relations and personnel
 - Common ownership and financial control
- Emergency Paid Sick Leave – new law - potentially FLSA “joint employer”
 - Hires or fires employee
 - Supervises and controls the employee’s work schedule or conditions of employment to a substantial degree
 - Determines the employee’s rate and method of payment
 - Maintains the employee’s employment records



OTHER UNIQUE ISSUES UNDER FFCRA

- Other sick leave/PTO provided by employer
 - Can employers require employees to use PTO/sick leave provided by employer?
- Pay calculation
 - Part-time employee paid sick leave calculation
- Furlough or layoff
 - Qualify for paid sick leave even if employee is furloughed or laid off?
- “Health care provider”
 - Along with emergency responders, can be exempted from expanded FMLA leave and paid sick leave

RELIEF FOR SMALL BUSINESSES UNDER FFCRA

● Employers with fewer than 50 employees

- Potential hardship waiver “when imposition of such requirements would jeopardize the viability of the business as a going concern”
- Exempt from FMLA lawsuits by employees
 - But DOL can still bring enforcement actions

● Employers with fewer than 25 employees - exception from FMLA job restoration when:

- Position no longer exists due to economic conditions or caused by COVID-19;
- Employer makes reasonable efforts to restore to equivalent position;
- If no equivalent position, employer makes efforts over next year to contact employee if equivalent position becomes available

COST SAVING EMPLOYMENT OPTIONS

LABOR COST SAVINGS MEASURES - OPTIONS

- Cutting Pay / Hours
- Furloughs / Temporary Lay Offs
- Reduction in Force (RIF) a/k/a “Lay Offs”



Note – “Phase 3” economic relief may deny certain relief to employers if they lay off or furlough employees

LABOR COST SAVING MEASURES CONSIDERATIONS WHEN CUTTING PAY / HOURS

● Contract Constraints – employment agreement or offer letter

● Wage & Hour:

- Exempt employees:
 - Make it temporary – in whole workweek increments, but not week-to-week
 - New salary threshold – \$684 per week / \$35,568 annual
- Non-exempt employees – minimum wage – federal, state or local law

● The Selection Process – consider protected employees:

- Discrimination
- Whistleblower retaliation
- Employees on FMLA, military, or other leave

LABOR COST SAVING MEASURES FURLOUGHS

Pros:

- Unemployment compensation
- Retain workforce > ramp back up more quickly

Contract Constraints – required pay or benefits?

Wage & Hour – paying salary to exempt employees

Sick Leave Laws

- Federal – FFCRA
- State & Local – e.g., AZ, CA, MA, MI, NY, Chicago, Dallas, D.C., Philadelphia, NYC



LABOR COST SAVING MEASURES REDUCTIONS IN FORCE (RIF)

- Unemployment Compensation
- Contract Constraints – Terminable “At Will” Vs. “Cause”
- Sick Leave Laws (See Above)
- Vacation/PTO – Must pay upon termination?
- Severance – Pay and/or continuing benefits
 - Severance Plans
 - Releases

EFFECT OF THESE ISSUES ON BENEFITS

HEALTH AND WELFARE BENEFIT CONSIDERATIONS

- Benefits Eligibility/Loss Of Coverage
 - Plan Provisions
 - Application Of COBRA
 - PPACA Considerations
 - Conversion Rights



HEALTH AND WELFARE BENEFIT CONSIDERATIONS

- Health And Welfare Premiums During Leave/Furlough
- Section 125 Mid-year Election Changes
 - Dependent Care
 - Changes In Spouse's Plan



HEALTH AND WELFARE BENEFIT CONSIDERATIONS

- Medical Benefits
 - Cost Sharing And COVID-19
 - Telehealth Services
 - High Deductible Health Plans/HSA



RETIREMENT PLANS CONSIDERATIONS

- Plan Contributions while on Leave/Furlough
 - Plan Definition of Compensation
 - Employee Contributions
 - Employer Contributions
- Severance from Employment



EMPLOYEE BENEFITS: RETIREMENT PLANS CONSIDERATIONS

- Years of service/hours of service
- In-service distributions
- Plan loan options

EMPLOYEE BENEFITS: RETIREMENT PLANS CONSIDERATIONS

- Reduction in employer contributions
- Partial plan termination
- Defined benefit plans-funding





THANK YOU! QUESTIONS?

For additional resources, please visit:
<https://bks-partners.com/coronavirus/>

Questions:
Please email: info@bks-partners.com

