

Coronavirus (COVID-19) Updates

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Note that this presentation is intended as a general discussion of the law and is not intended as legal advice for any particular situation.

Families First Coronavirus Response Act

- Signed into law last night (March 18, 2020) – effective date is April 2, 2020
- Overview:
 - New paid sick leave for COVID-19 reasons
 - Expansion of Family and Medical Leave Act (FMLA)
 - Which includes certain COVID-19 reasons and a new paid leave component
 - Has payroll tax credit included to help fund the paid leave mandates
 - Unemployment help for state unemployment insurance
 - Two “Divisions” related to employment law:
 - Division C – Emergency Family and Medical Leave Expansion Act
 - Division E – Emergency Paid Sick Leave Act

Division E – Emergency Paid Sick Leave

- Applies to employers with fewer than 500 employees
- Provides ten days of paid leave
 - 80 hours for full-time employees
 - Pro-rata amount for part-time employees based on two-week average
 - May be used for six COVID-19-related reasons
 - Amount paid is subject to caps, which are subject to the reason the leave is being used
- Secretary of Labor may issue certain regulations which would exclude health care providers and EMTs from the definition of “employee” and exempt employers with fewer than 50 employees if certain circumstances apply

PST Reasons

- Under the Emergency PST, there are six uses for sick leave:
 1. The employee is subject to a Federal, State, or local quarantine;
 2. A health care provider has advised the employee to self-quarantine;
 3. The employee has symptoms and is seeking diagnosis;
 4. The employee is caring for an individual under quarantine;
 5. The employee's child's school or place of care is closed or a child care provider is unavailable; or
 6. Other substantially similar condition.
- Payments:
 - For uses 1-3, the employee must be paid at his/her normal rate of pay, up to \$511/day and \$5,110 in the aggregate
 - For uses 4-6, the employee must be paid at 2/3rds his/her normal rate, up to \$200/day and \$2,000 in the aggregate

PST Continued

- PST must be available for immediate use on April 2, regardless of how long the employee has been employed by an employer
- The Act also prohibits an employer from requiring employees to draw from existing paid time off (personal, sick, vacation leave, etc.)
 - The employee must be allowed to use PST before dipping into any other accrued leave provided by the employer
- Notice and Records:
 - Must post the DOL-provided notice/poster within 7 days of its publication
 - Must keep records related to use for 3 years

Division C – FMLA Expansion

- Also applies to employers with fewer than 500 employees
 - There is an exemption for health care providers and EMT workers
- Provides for an additional use for FMLA leave:
 - Where the employee is unable to work or telework due to the need for leave to care for his/her minor child (younger than 18 years old) because the child's school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency
 - Also included in the Emergency PST
- The first ten work days may consist of unpaid leave
 - The employee is able to substitute any accrued vacation leave, personal leave, or medical/sick leave for this unpaid leave
- After first ten days, leave must be paid in an amount equal to 2/3rds of the employee's regular rate of pay
 - Up to \$200/day, and \$10,000 in the aggregate

FMLA Expansion

- Employee must be employed for 30 days before being eligible
- Reinstatement:
 - Typical FMLA reinstatement rules apply
 - Except for employers with fewer than 25 employees and:
 - The employee's position no longer exists
 - Reasonable efforts have been made to restore the employee to an equivalent position
 - And reasonable efforts have been made to contact the employee about an equivalent position for at least 1 year

Tax Credits

- Employers have to front the leave and foot the bill initially
- Then eligible for tax credits, up to the capped amounts
 - 100% tax credit, up to \$511/day per employee taking PST for their own condition, \$200/day per employee taking PST for their family member's condition, and \$200/day per employee taking Expanded FMLA leave
- Employers offering more than the cap amount (for employees making more than that amount) will not receive tax credits for the amount exceeding the cap

Coronavirus – COVID-19

- Those infected can experience no symptoms, all the way up to severe impact
- Transmitted through respiratory droplets – person to person within 6 feet
- Could also transmit through hard surface contamination
 - Although it's unknown how long the virus survives on each surface
- Symptoms (may appear 2-14 days after initial exposure):
 - Fever
 - Cough
 - Shortness of breath
- Follow the CDC's guidance and guidelines (every agency follows them as well)

Workplace Steps

- Think about OSHA General Duty Clause – must furnish a place of employment free from recognized hazards
- What to communicate with employees:
 - Stay home if they are sick
 - Report any illness or possible exposure
 - Conduct frequent hand washing and use hand sanitizer
 - Practice proper distancing and cover coughs/sneezes
 - Review leave policies
- Additional steps:
 - Provide more soap, sanitizers, sanitizing wipes, tissues, etc.
 - Perform additional cleaning
 - Cancel events – Maryland now prohibits events of more than 10 people

Protective Gear

- Unless the workplace is at a high risk, protective gear is not recommended/required
 - Not required to permit masks or gloves in the workplace – but think about ADA reasonable accommodations
- Surgical masks are not respirators – they do not generally protect individuals from catching the virus
- Respirator masks are OSHA-regulated, as are nitrile gloves
 - Employers must conduct training for proper glove use if using nitrile gloves, and must provide notice if allowing use of respirator masks (such as the N95)

Social Distancing

- Consider telecommuting for some of your workplace
- Stagger work schedules if possible
- Eliminate shared meal times
- Relocate employees to other areas in the office

Telecommuting

- Think about costs:
 - Some states require reimbursement
- Security concerns
 - Especially for trade secrets and HIPAA-covered information
- ADA concerns:
 - Costs related to reasonable accommodations at home
 - Could potentially set up future reasonable accommodation requests
- Timekeeping
 - Make sure non-exempt employees are keeping their time
- OSHA
 - Illness and injury reporting still applies, but OSHA does not generally regulate home offices

Telecommuting Continued

- Establish clear procedures
- Communicate expectations for productivity
- Set schedules
- Communicate availability for telecommuting
- Expectations for continuing communications

Employee Travel

- Business travel
 - Limit it to only essential travel
 - Cancel travel to CDC Level 2/3 countries
 - Identify risk factors
 - Related directly to the specific employee
 - And regarding the location traveling to
- Person travel
 - Require compliance with CDC travel restrictions
 - Require quarantine for employees traveling from Level 2/3 countries

Screening Employees

- Medical examinations and disability-related inquiries are generally restricted under the ADA
- COVID-19 has lessened these restrictions somewhat
 - Can run temperatures of employees (but high fever does not necessarily mean COVID-19, and no fever does not necessarily mean no COVID-19)
 - And always keep employee medical information confidential
- Think of non-invasion ways of screening
 - Can ask employees whether they have traveled or come into close contact with someone affected by COVID-19
 - Can also ask about possible symptoms
- Can require employees to report if they have been diagnosed with COVID-19

Visitors

- Be aware of disability-related inquiry if the visitor is an applicant (same ADA concerns)
- Generally, though, employment laws do not apply to visitors
 - Can screen and ask questions related to COVID-19
- Can also generally ban all visitors from coming into workplace

If an Employee is Sick

- Send them home immediately
 - Keep their information confidential
 - Can ask for certification from doctor saying that the employee is clear of the virus – but it's recommended to not do this right now
- Think about the various sick and safe leave laws that are now applicable
 - State laws – both sick leave and family/medical leave
 - Newly enacted Emergency Paid Sick Leave and FMLA Expansion
 - Think about other ways to help employees out
 - Unpaid leave
 - Flexible leave
 - Fronting leave

If an Employee is Sick

- Workers' Compensation?
 - Could apply if the employee is able to prove he/she contracted it at work
- OSHA
 - Reportable if it's work-related
- Department of Health
 - Should report to them as well
- Unemployment Insurance
 - Maryland just expanded UI to cover certain COVID-19 terminations and self-quarantines
- Communicating with staff
 - Let employees know that someone has contracted the virus – keep information confidential, though
 - And conduct a deep cleaning of the employee's area

Quarantines

- If the employee is quarantined, but still able to work, must pay them for time worked – or the entire week if it's an exempt employee
 - Exempt employees can be told to not perform any work during the quarantine – must not work for entire week
- If unable to work, should be cognizant of paid sick leave laws, but can generally require use of PTO

Requests to Stay Home

- Maryland/most other states have not yet closed non-essential offices and businesses – can still require coming to work (generally advised against it, though)
 - Can also require employees to stay home
- If employee is fearful and requests to stay home, work with them and consider allow use of certain leave time (paid or unpaid)

Union Obligations

- Look at Collective Bargaining Agreement
 - Anything related to leave, management rights, telework?
- Might have to bargain any changes related to leave
 - Duty to bargain might be suspended for compelling reasons
- Comply with existing CBA obligations until discussed with Union and/or changed

Response Plan

- Create a plan to:
 - Establish contact persons
 - Address risks and concerns
 - Explore distancing options
 - Communicate expectations
 - Create communication plans
- Plans related to this response should be in writing, should be clear, and should account for existing policies as well as the new laws

QUESTIONS?

THANK YOU!