



Phillips Lytle LLP

COVID-19 – Immigration Issues for Tennis Facility Owners and Operators

United States Tennis Association

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April 17, 2020



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COVID-19 Employment Issues for Tennis Facility Owners and Operators

United States Tennis Association

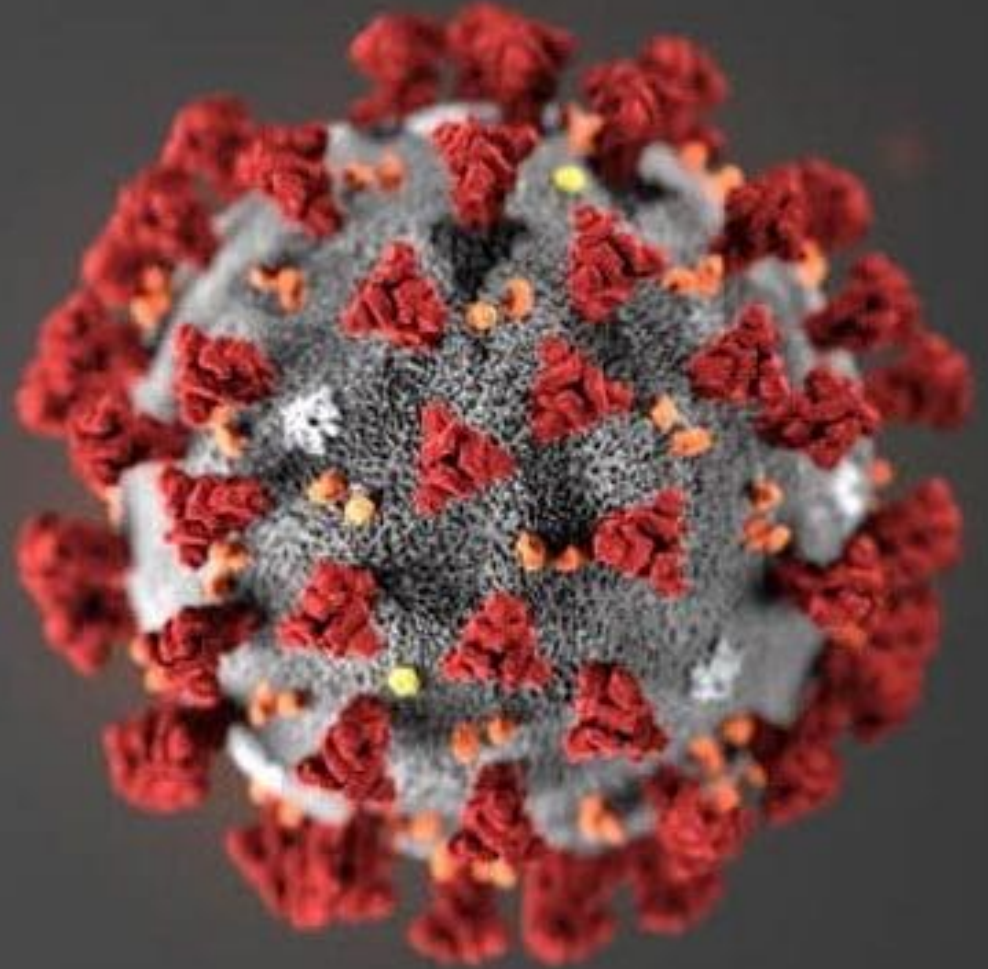
James R. Grasso, Esq.

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Families First Coronavirus Response Act - Overview





Families First Coronavirus Response Act (FFCRA)

- Effective April 1, 2020
- Two components
 - Emergency Paid Sick Leave Act (EPSLA)
 - Emergency Family and Medical Leave Expansion Act (EFMLEA)
- Expires **December 31, 2020**



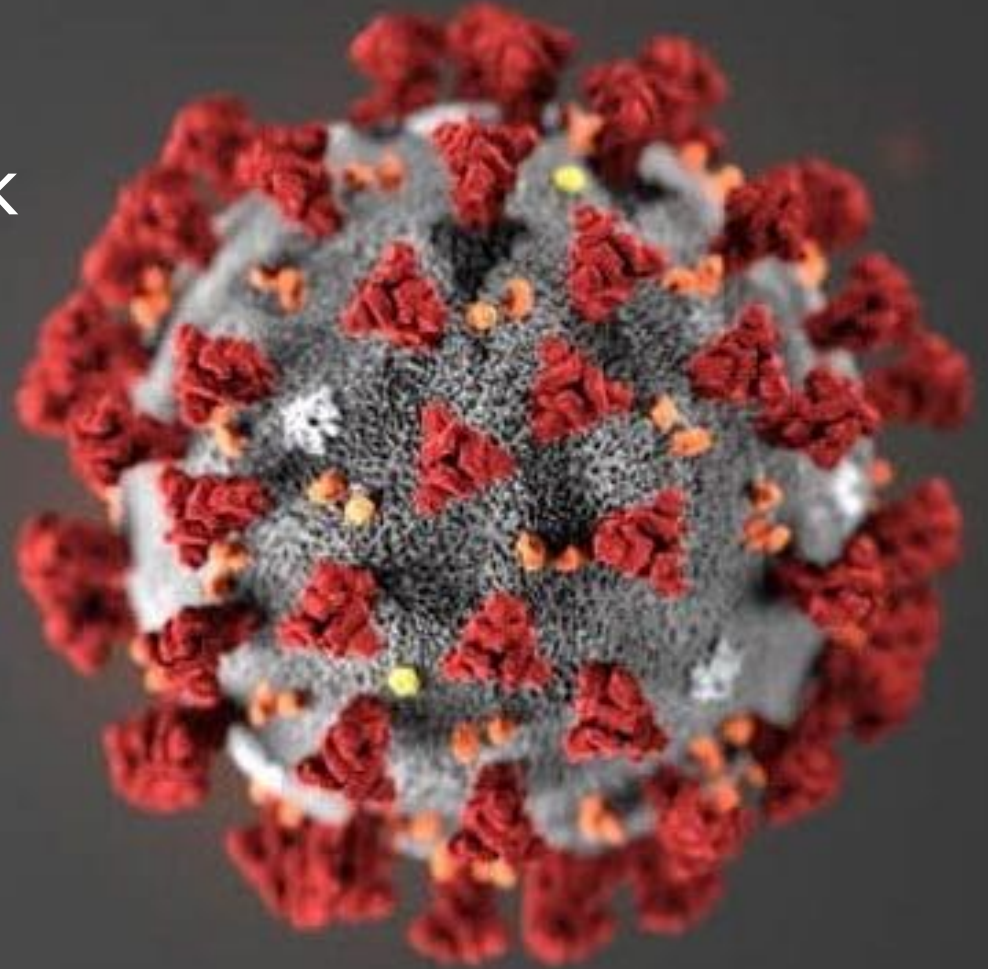
Covered Employers

- All employers with fewer than 500 employees are covered.
- Limited exemption for small businesses (fewer than 50 employees) from EFMLEA and part of EPSLA.



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Emergency Paid Sick Leave Act





Emergency Paid Sick Leave Act (EPSLA) - Overview

- Benefit basics:
 - Six qualifying COVID-19 related reasons for job-protected leave
 - Continuation of health insurance during leave
 - Entitlement to paid sick leave over a two-week period
 - Full-time employees – up to 80 hours
 - Part-time employees – average of hours worked over two-week period



Emergency Paid Sick Leave Act (EPSLA) – Employee Eligibility

- All employees (full and part-time) are immediately eligible upon hire, if they are unable to work or telework for a reason covered by the EPSLA
- No waiting period



EPSLA – Qualifying Reasons for Leave (Reasons 1-3)

- An employee is entitled to take leave under the EPSLA if the employee is unable to work or telework because the employee:
 1. Is subject to a federal, state or local quarantine or isolation order related to COVID-19;
 2. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 3. Is experiencing COVID-19 symptoms and seeking a medical diagnosis;



EPSLA – Qualifying Reasons for Leave (Reasons 4-6)

4. Is caring for an individual subject to a federal, state or local quarantine or isolation order related to COVID-19, or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. Is caring for his or her child whose school or place of care is closed (or child provider is unavailable) due to COVID-19 precautions; or
6. Is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.



EPSLA – Paid Leave at 100% for Reasons 1-3

- An employee must be paid **100%** of his/her regular rate of pay for leave hours taken because the employee:
 1. Is subject to a federal, state or local quarantine or isolation order related to COVID-19;
 2. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
 3. Is experiencing COVID-19 symptoms and seeking a medical diagnosis.
- **Pay for reasons 1-3 capped at \$511 per day, or \$5,110 in total.**



EPSLA – Paid Leave at Two-Thirds Pay for Reasons 4-6

- The employee is due **two-thirds** of the required rate of pay for leave hours taken because the employee:
 4. Is caring for an individual subject to a federal, state or local quarantine or isolation order related to COVID-19, or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 5. Is caring for a son or daughter whose school or place of care is closed (or child provider is unavailable) due to COVID-19 precautions; or



EPSLA – Paid Leave at Two-Thirds Pay for Reasons 4-6

6. Is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.
- **Pay for reasons 4-6 is capped at \$200 per day, or \$2,000 in total.**



EPSLA – Interaction With Other Leave

- EPSL is in addition to any other leave employee entitled to under any law or policy.
- Employers cannot require employees to use employer provided time off before using EPSL.
- Employer can allow use of employer provided time off to supplement EPSL up to normal earnings.



EPSLA – Intermittent Leave

- Intermittent leave is allowed with employer permission only to care for a child whose school or place of care is closed
 - employer can limit intermittent leave to full day increments or agree to less than full-day increments



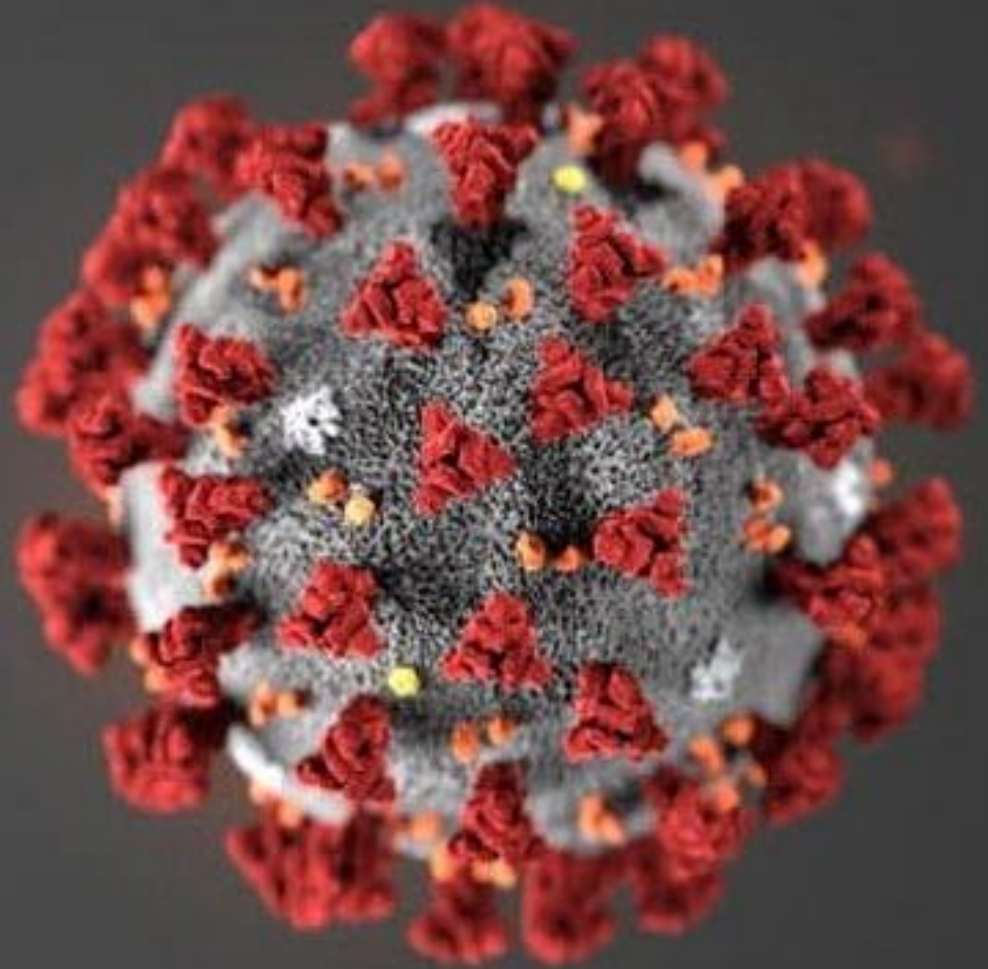
EPSLA – Job Protections

- It is unlawful to discharge, discipline or in any manner discriminate against an employee who takes leave or files any complaint under the law.
- Employers may still take any action that would have been taken regardless of whether an employee took leave, *e.g.*, layoff or furlough



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Emergency Family and Medical Leave Expansion Act





Emergency Family Medical Leave Expansion Act (EFMLEA) - Overview

- EFMLEA provides leave for an employee who is unable to work or telework because he/she is required to care for his or her child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.
- Up to 12 workweeks of job-protected leave, with continuation of health insurance
- All employees if they have been employed by their employer **for at least 30 calendar days.**



EFMLEA – Unpaid and Paid Leave Periods

- First two weeks of EFMLEA leave is “unpaid.”
 - Employee may choose to use paid sick leave under the EPSLA (along with accrued paid time up to normal earnings, if employer allows), during first two weeks of EFML
- Remaining 10 weeks paid at two-third regular rate of pay
 - **\$200 per day/\$10,000 aggregate cap**



EFMLEA – Use of Employer Provided Paid Leave

- After the first two workweeks of EFML employee may elect to use **or** employer may require the employee to use concurrently any employer-provided leave that would be available to the employee in that circumstance, such as PTO and vacation, but not sick or medical leave



EFMLEA – Intermittent Leave

- Intermittent leave is allowed with the employer's permission



EFMLEA Leave – Interaction With FMLA

- This is a new leave reason under the FMLA, not additional weeks
- If an employer was already covered by the FMLA prior to April 1, 2020, an employee remains limited to a total of 12 weeks of leave for all FMLA reasons during the employer's FMLA 12-month measurement period



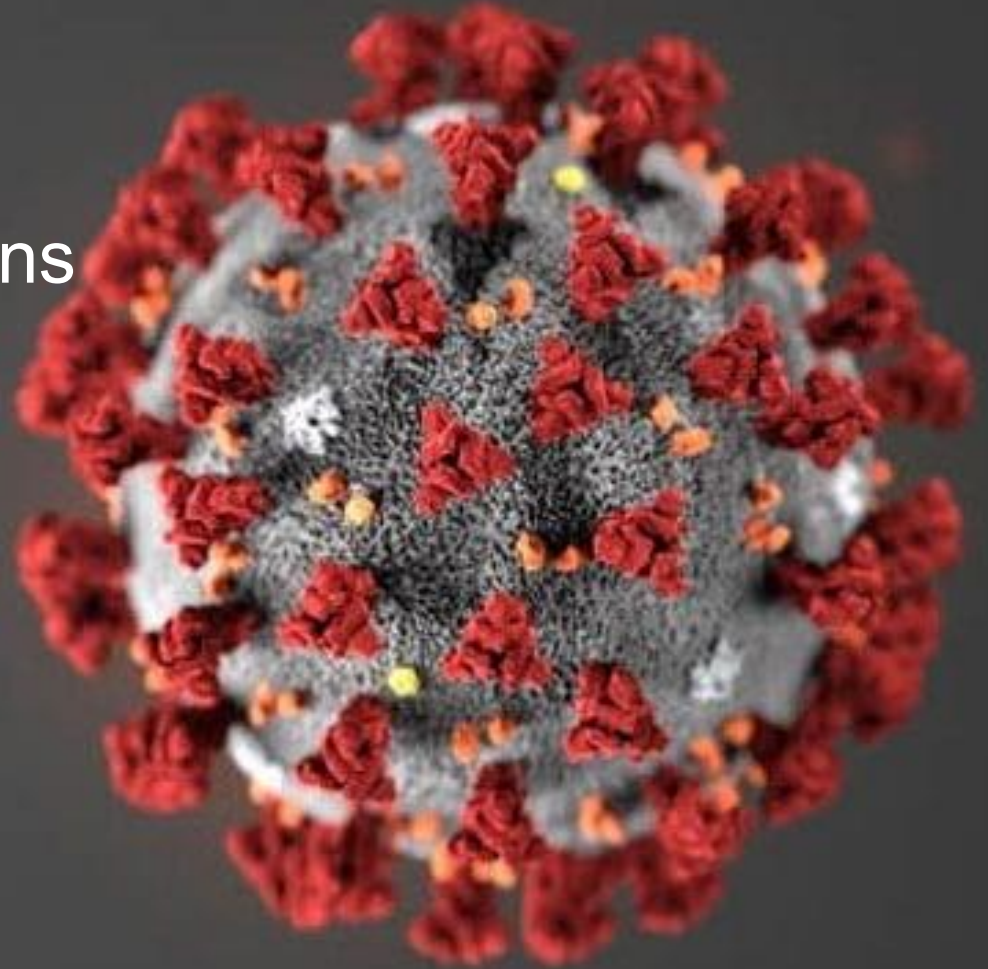
EFMLEA – Job Protections

- Job protections and reinstatement provisions of the FMLA apply.
- Limited reinstatement exception for employers with fewer than 25 employees, if:
 - The position no longer exists due to economic conditions related to the COVID-19 public health crisis;
 - The employer makes reasonable efforts to restore the employee to an equivalent position; and
 - If reinstatement is not possible, the employer makes reasonable efforts to contact the employee for up to one year if an equivalent position becomes available.



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EPSLA and EFMLEA – Miscellaneous Provisions





Required Documentation for Leave

- Regardless of whether an employer grants or denies a request for paid sick leave or expanded family and medical leave, they must document the following:
 - The name of the employee requesting leave;
 - The date(s) for which leave is requested;
 - The reason for leave; and
 - A statement from the employee that he or she is unable to work because of the reason.



Required Documentation for Leave (Cont'd)

- If an employee requests leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, you must also document:
 - The name of the child being cared for;
 - The name of the school, place of care, or child care provider that has closed or become unavailable; and
 - A statement from the employee that no other suitable person is available to care for the child.



FFCRA – 100% Fully Refundable Tax Credit

- 100% tax credit against employer's portion of FICA taxes.
- Employer not required to pay employer portion of Social Security on wages required to be paid under the EPSLA or EFMLEA.
- The IRS has issued applicable forms and instructions.
- **Employers are not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.**



FFCRA – Small Business Exemption

- Small businesses with fewer than 50 employees are exempt from the EFMLEA and providing leave under the EPSLA to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions, if granting leave would jeopardize the viability of the business.



FFCRA – Small Business Exemption

- **Employer self-certifies – exemption applies if employer determines and documents that:**
 1. Leave would result in expenses and financial obligations exceeding available business revenues, and cause the small business to cease operating at a minimal capacity;
 2. The employee's absence would entail a substantial risk to the financial health or operational capabilities of the business because of the employee's specialized skills, knowledge of the business, or responsibilities; **or**



FFCRA – Small Business Exemption (Cont'd)

3. There are insufficient employees able, willing and qualified at the time and place needed to perform labor or services provided by the employee, and these labor or services are needed for business to operate at a minimal capacity.



FFCRA – Mandatory Poster Requirement

- FFCRA poster must be conspicuously posted and may be distributed online, posted on the employer's website, directly mailed or e-mailed to employees.
 - It does *not* have to be visible to job applicants.
- DOL FFCRA poster is available online at www.dol.gov/agencies/whd



EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.*

▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; 2. has been advised by a health care provider to self-quarantine related to COVID-19; 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis; 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none"> 5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|--|--|

▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243

TTY: 1-877-889-5627

dol.gov/agencies/whd





FFCRA – Employees Who Are Not Working

- Paid leave not required under FFCRA for employees who are not working.



State and Local Leave Laws

- State and local leave laws may apply in addition to leave under the FFCRA (EPSLA and EFMLEA)
 - New York COVID-19 sick leave law and Paid Family Leave
 - New Jersey Earned Sick Leave Law
 - New York City sick leave law
 - Westchester County, New York leave law
 - Other state and local leave laws



Next Steps for Employers for New Leave Laws

- Consider drafting appropriate policies that cover the new sick leave rights under the EPSLA, EFMLEA and any applicable state or local law.
- Communicate new leave entitlements to employees.
- Maintain proper documentation for federal tax credits.
- Be aware of parallel or overlapping federal and state leave requirements.



Unemployment Issues - Layoffs and Furloughs

- **Furlough** – Mandatory temporary leave of absence
 - Sounds better than lay off
 - Employment is not terminated
 - Non-work/non-pay status
 - May be able to maintain health insurance
 - No pay out of accrued time
 - Employees eligible for unemployment benefits



Unemployment Issues - Layoffs and Furloughs

- **Layoff** – Historically a temporary separation from work (like furlough) but now typically interpreted to mean termination of employment.
 - Pay out of accrued time
 - COBRA benefits
 - Employees eligible for unemployment benefits



CARES Act - Pandemic Unemployment Assistance

- CARES Act temporarily makes self-employed workers, such as independent contractors, who are unable to work because of the COVID-19 crisis eligible for unemployment benefits until December 31, 2020.
 - for purposes of unemployment there is no difference between someone who is an independent contractor, self-employed or a freelancer - all are eligible if requirements are met



CARES Act - Federal Pandemic Unemployment Compensation

- Provides an additional \$600 in federal unemployment benefits
 - on top of regular state unemployment benefit
 - available to any employee determined eligible for unemployment benefits, including partial benefits
 - available for shared work
 - through July 31, 2020
 - weekly benefit can exceed regular weekly salary



CARES Act – Additional Unemployment Benefits

- Elimination of one week waiting period through December 31, 2020
- Additional 13 weeks of regular unemployment benefits through December 31, 2020
 - Up to 39 weeks instead of normal 26 week limit



OSHA Workplace Safety Issues

- Employers covered by the Occupational and Safety Health Act (OSHA) have a duty under the General Duty Clause to furnish to each worker “employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm.”
- There is no specific OSHA standard for COVID-19
- OSHA website directs employers to follow CDC “Interim guidance for Business and Employers”



Wage and Hour Issues – Hourly Employees

- Hourly employees only have to be paid for the time they work.
- Hourly employees must be paid for all time worked regardless of where or when the work occurs.



Wage and Hour Issues – Salaried Overtime Exempt Employees

- Salaried overtime exempt employees must receive their full salary for any workweek in which they perform any work, regardless of the number of days or hours worked.
- Salaried overtime exempt employees do not need to be paid for any workweek in which they perform no work.



Wage and Hour Issues – Employment Contracts

- Individual employment contracts may restrict an employer's flexibility in reducing hours and laying off employees and should be reviewed before any action is taken.



Leave and Accommodation Requirements – Americans with Disabilities Act and State Laws

- COVID-19 may qualify as a disability under the Americans with Disabilities Act (ADA) if it is severe or persists longer than is typical for the flu, such as if complications develop.
 - If an employee with COVID-19 qualifies as disabled under the ADA he or she will be entitled to reasonable accommodations, such as unpaid leave.
- COVID-19 may be a disability under state disability discrimination laws, e.g., NY and NJ



Employment Discrimination Issues

- Employers cannot single out or take adverse action against employees based on any protected characteristic, such as:
 - Race
 - National origin
 - Age
 - Disability
 - Etc.



Practical Considerations

- Q. May an employer ask an employee who reports being ill or calls in sick if the employee is experiencing COVID-19 symptoms, such as fever, chills and a cough or sore throat?
- A. Yes. However, employers must maintain all information about an employee's medical condition as confidential.



Practical Considerations

- Q. May an employer require an employee who has been away from the workplace to provide a doctor's note certifying the employee is fit to return to work?
- A. Yes.



Practical Considerations

- May an employer require an employee who tests positive for COVID-19 to not report to work?
- A. Yes.



Practical Considerations

- May an employer require an employee who has a suspected case of COVID-19 to not report to work?
- A. Yes.



Practical Considerations

- May an employer require an employee who has been exposed to a person who has tested positive for COVID-19 or who has a suspected case of COVID-19 to not report to work?
- A. Yes.



Practical Considerations

- Q. Do an employer have to inform employees if a co-worker tests positive for COVID-19 or is suspected to be infected?
- A. If an employee is suspected or confirmed to have COVID-19, employers should inform co-workers of their possible exposure and of any steps being taken to reduce the chance of infection. Employers must comply with their confidentiality obligations under the ADA regarding employee medical information.



Practical Considerations

- Q. Does an employer have to provide reasonable accommodation for an employee who has an underlying medical condition that makes the employee susceptible to adverse complications from the virus?
- A. An employer may have to provide reasonable accommodation for an employee who has a medical condition that puts them at increased risk if they contract the virus.



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