Workplace Spotlight:

Protecting Your Workforce and Understanding Policies as Your Organization Responds to COVID-19 – Part 2

March 2020
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• Legal or tax advice
• The final word on today’s topics
• A political opinion

Before taking any actions on the information contained in this presentation, employers should review this material with internal and/or external counsel.
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Helena is Senior Counsel in ADP’s Litigation Department. She is an experienced corporate and employment litigation attorney with significant in-house and law firm experience. Her current practice focuses on litigation and advice and counsel on hot topics in employment law, with a special interest in pay equity and workplace diversity issues.

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Ellen is Vice President, Counsel for ADP Compliance Solutions. Ellen specializes in emerging compliance issues, including health care reform, the gig economy, and pay equity. She has extensive experience providing training and day-to-day advice on HR compliance. She is a frequent speaker on how workplace laws affect employers of all sizes.

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Vice President, Government Affairs, ADP, LLC

Pete is Vice President of ADP Government Affairs. He is responsible for managing legislative and regulatory affairs, covering a variety of employer compliance matters including employment tax payments and major legislative trends such as the Affordable Care Act. He has over 30 years of experience working with state legislatures and Congress, as well as the IRS and state agencies.
Agenda

1. Families First Coronavirus Response Act
2. IRS and other federal agency updates
3. Federal and state benefit laws
4. Next steps
Families First Coronavirus Response Act
Families First Coronavirus Response Act (FFCRA) enacted

Employers with under 500 employees must provide paid sick and paid family leave to employees affected by COVID-19

• No cost: Affected employers get a corresponding tax credit

Three primary sections for employers:

• Emergency Family and Medical Leave Act Expansion
• Emergency Paid Sick Leave Act
• Tax Credits for Paid Sick and Paid Family and Medical Leave
Which employers are affected?

Generally - private sector employers with under 500 employees.

**Exemptions available**

- Health-care providers
- Emergency responders
- Businesses with fewer than 50 employees
  - If such requirements would jeopardize the business
Emergency Family and Medical Leave Expansion Act

- Up to 12 weeks of job protected leave
  - Must have been employed for 30 calendar days
- ONLY if unable to work or telework to care for a child if the school or child care provider is closed due to COVID-19
- 10 days can be unpaid, or employees may use other paid leave (including paid leave provided by this Act)
- 10 weeks of paid leave
- Paid at two-thirds the Regular Rate of Pay
  - Capped at $200 per day, $10,000 for 2020
Calculation of Expanded FMLA pay

Part-time

“Average hours the employee works over a 2-week period.”

Variable work schedules

“Average hours the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type.”

Less than six-months of work history = “reasonable expectation of the employee at the time of hiring”
Emergency Paid Sick Leave Act

Employers with 500 or fewer employees and government entities
- All employees, regardless of how long employed
- Unable to work (or telework) due to the following:....

Self
- Quarantine or advised to self-quarantine related to COVID-19
- Experiencing symptoms and seeking a diagnosis

Caring for Others
- Caring for an individual subject to quarantine
- Caring for a son or daughter if the school/child care is closed
- Other similar condition as specified by HHS/DOL/Treasury
Calculation of emergency paid sick leave

How long?
• 10 days

Self
• Regular Rate of Pay
• Up to $511 per day ($5,110)

Caring for Others
• Two-thirds the Regular Rate of Pay
• Up to $200 per day ($2,000)

Same rules for part-time and variable-hour workers.
Paid family leave and paid sick leave tax credits

Non-governmental employers with less than 500 employees

- Credit equal to 100(++) percent of the qualified sick/family leave wages paid.
  - Subject to those limits.
  - The credit is increased by specified health expenses (e.g., employer-paid health plan premiums).
  - Plus 1.45% (Employer Medicare tax).

Applies to federal employment taxes

- Usually due within a few days of each payroll.
- This provides the funds needed to pay sick and family leave benefits.
- Treasury Department and IRS will also make advance payments of the credit.
Effective no later than April 2, 2020; Sunsets December 31, 2020.

- Nothing in the law diminishes any rights that employees may have under federal, state, or local laws; collective bargaining agreements; or an employer’s existing policy.
  - i.e., State or Local Paid Leave Mandates.

Paid Sick Leave and Paid Family and Medical Leave Payments are wages.

- But exempt from employer Social Security taxes.
- Subject to Medicare taxes, but the tax credit is increased by the tax.

Notices

- Employers must post a notice of these requirements.
- U.S. Department of Labor to issue a model notice by March 25.
## Paid leave overview

<table>
<thead>
<tr>
<th>Division E – Emergency Paid Sick Leave</th>
<th>Covered Employers</th>
<th>Duration of Leave</th>
<th>Qualifying Reasons for Leave</th>
<th>Required Wage Replacement</th>
<th>Applicability of: Division G – Tax Credits for Paid Sick and Paid Family and Medical Leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective 15 days after enactment.</td>
<td>Private sector employers with fewer than 500 employees. Public sector employers with 1 or more employees. Good cause exemption for employers with fewer than 50 employees. Applies to reason #5 only. (DOL Rule)</td>
<td>Employer must provide 2 weeks of paid sick leave for full-time covered employees. Special rule for part-time employees.</td>
<td>1. Employee is subject to a Federal, state or local quarantine related to COVID-19. 2. Employee has been advised by a health care provider to self-quarantine. 3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis. 4. Employee is caring for an individual who is subject to quarantine pursuant to 1 and 2. 5. To care for a child or children whose school or care provider is unavailable due to COVID-19. 6. Employee is experiencing a similar condition as specified by HHS, DOL or Treasury.</td>
<td>Reasons #1-3: Employee’s regular rate of pay. Capped at $511/day and $5,110 total. Reasons #4-6: 2/3 of employee’s regular rate of pay. Capped at $200/day and $2,000 total. Special rule for part-time employees.</td>
<td>Private sector employers with fewer than 500 employees may obtain a credit for wage replacement: Employers receive 100% payroll tax credit (refundable as needed) for required paid sick leave wages plus certain health care expenses of the employer.</td>
</tr>
<tr>
<td>Expires 12/31/2020</td>
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<td>Effective 15 days after enactment.</td>
<td>Private sector employers with fewer than 500 employees. Good cause exemption for employers with fewer than 50 employees. (DOL rule)</td>
<td>Employer must provide 10 weeks of paid family and medical leave for employees (employed for at least 30 days). Special rule for part-time employees.</td>
<td>Employee is unable to work (or telework) due to a need for leave to care for a son or daughter under 18 years of age if the school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency.</td>
<td>Not less than 2/3 of regular rate of pay, based on # of hours scheduled to work. Capped at $200/day and $10,000 total. Special rule for part-time employees.</td>
<td>Private sector employers with fewer than 500 employees may obtain a credit for wage replacement: Employers receive 100% payroll tax credit (refundable as needed) for required paid family and medical leave wages plus certain health care expenses of the employer.</td>
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Source: Ways and Means Committee
IRS and other federal agency updates
Federal agency guidance

  - Notice 2020-17, Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic
  - Notice 2020-15, High deductible health plans and expenses related to COVID-19
- Centers for Disease Control
  - Americans with Disabilities Act implications
    - Medical Examinations
    - Disability-Related Inquiries
Federal agency guidance (continued)

• U.S. Department of Labor COVID-19 or Other Public Health Emergencies
  – https://www.dol.gov/agencies/whd/pandemic
  – FLSA Q&A https://www.dol.gov/agencies/whd/flsa/pandemic
  – FMLA Q&A https://www.dol.gov/agencies/whd/fmla/pandemic

• Occupational Safety and Health Administration
  – Standards and directive applicable to apply to worker exposure to novel coronavirus, COVID-19.
    o https://www.osha.gov/SLTC/covid-19/standards.html
  – Preventing Worked Exposure to Coronavirus (COVID-19)
    o https://www.osha.gov/Publications/OSHA3989.pdf
Federal and state benefit laws
Employee benefits sources

- Family and Medical Leave Act
- State Paid Sick Leaves
- Unemployment Insurance
- Workers' Compensation
- State Disability Insurance
- Existing company plans and policies
### Traditional FMLA vs. Expanded FMLA (FFCRA)

<table>
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<tr>
<th>Covered Employers</th>
<th>50 or more employees, agencies, schools</th>
<th>Under 500 employees (with exceptions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligibility</td>
<td>Employed for 12 months and worked 1,250 hours in prior year</td>
<td>Employed for at least 30 calendar days</td>
</tr>
<tr>
<td>Duration</td>
<td>Up to 12 weeks of job protected leave</td>
<td>Up to 12 weeks of job protected leave</td>
</tr>
<tr>
<td>Use</td>
<td>Uses include employee’s own “serious health condition” or care for child, spouse, parent with “serious health condition”</td>
<td>ONLY if unable to work or telework to care for a son or daughter if the school or child care provider is closed related to COVID-19</td>
</tr>
<tr>
<td>Pay</td>
<td>Unpaid</td>
<td>First 10 days of the leave can be unpaid; remainder of the leave must be paid at two-thirds the employee’s regular rate of pay (subject to limits)</td>
</tr>
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</table>

Traditional FMLA still applies for many employers and leave situations.
U.S. states with paid sick leave

States with COVID-19 specific or existing paid sick leave provisions (as of 3.19.20)
State paid sick leave considerations

• Covered uses for state paid sick leaves are state/jurisdiction dependent

• Consider:
  – Confirmed COVID case
  – Suspected COVID-19 case
  – Care for person with COVID-19 (covered relation)
  – Quarantine – Voluntary (preventive care)
  – Quarantine - Mandatory
  – School closure
  – Business closure (curfew)

• Consider state-specific eligibility definitions, duration of benefit, and amount of pay
Examples of emergency paid sick leave rules

**New York**

Applies to employees under mandatory or precautionary quarantine or isolation.

Leave depends on employer size as of January 1, 2020, and employer’s net annual income.

Benefit not available if employee can continue to work through remote access or other means.

**Minneapolis**

Employees can use paid sick leave for COVID-19 screening and testing following close personal contact with a COVID-19 infected or symptomatic person.

**Philadelphia**

Preventive medical care includes:

- Evaluating a person under investigation for COVID-19.
- Employees/family members at greater risk of harm than the general population if COVID-19 contracted.

**Colorado**

Covered employers must provide employees who have flu-like symptoms who are being tested for COVID-19 up to 4 paid sick leave days.

Industry specific—including food services, child care, education and related services, certain home health care providers, nursing homes, and community living facilities.
Employee benefits considerations

Reductions in hours or furloughs

Generally, a reduction in hours or furlough is not a COBRA qualifying event, unless it results in a loss of group health coverage.

An employer’s plan rules will govern whether either event will result in a loss of coverage.

Employers should ensure COBRA notices are used if there is a loss of coverage as a result of either event.
Next steps

• Determine whether your company is covered by Families First Coronavirus Response Act

• Check local regulations for temporary curfews that may impact your business

• Update your employees on benefits that may be available to them

• **Coming soon**: ADP Employer Preparedness Toolkit: Coronavirus Disease (COVID-19) for additional FAQs and links to other resources
Thank you for attending!

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