

BAIRD HOLM COVID-19 WEBINAR: *UPDATE FOR EMPLOYERS*

March 20, 2020

The “Families First Coronavirus Response Act”
and Other Important Employer Issues

Your COVID-19 Webinar Team

- Randy Stevenson – rstevenson@bairdholm.com
- Scott S. Moore – smoore@bairdholm.com
- Kelli Lieurance – klieurance@bairdholm.com
- Morgan Krieser – mkrieser@bairdholm.com

The Emergency Paid Sick Leave Act

- Employers with fewer than 500 employees
- Up to 80 hours at the regular rate of paid sick leave for full-time employees
- Part-time employees - the equivalent number of hours the part-time employee works (on average) over a 6-month period
- The paid sick time must be available for immediate use by employees regardless of their length of service

Emergency Paid Sick Leave

- Employee is subject to a quarantine or isolation order related to COVID-19
- Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19
- Employee has symptoms of COVID-19 and is seeking a medical diagnosis
- Caring for an individual who is subject to an order, or has been advised, to quarantine

Emergency Paid Sick Leave

- Employee is caring for a son or daughter where the school or place of care has been closed, or the child care provider is unavailable, due to COVID-19 precautions
- The employee is 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

- Paid leave at employee's regular rate to a maximum \$511 per day (\$5,110 in the aggregate) for reasons related to the employee's own health, exposure, or quarantine
- Paid leave at 2/3rds employee's regular rate to a maximum \$200 per day (\$2,000 in the aggregate) for other reasons

Emergency Paid Sick Leave

- Paid sick time will not carry over from one year to the next
- Not an earned benefit that must be paid out upon separation (like PTO/ vacation)
- Benefit is in addition to whatever the employer already provides and not concurrent
- The employer cannot require the use of other paid leave first

Emergency Paid Sick Leave

- Optional exclusion of certain health care providers and emergency responders
- DOL may issue regulations to exempt small businesses with fewer than 50 employees from paid leave provisions related to the child care due to school closing if it would jeopardize the viability of the business

The Emergency Family and Medical Leave Expansion Act

- Applies to employers with fewer than 500 employees and government employers
- Employees who have been on the job for at least 30 days
- 12 weeks of job-protected leave

EFMLEA

- The employee is unable to work due to a need to care for a child of an employee if the child's school or place of care has been closed, or the child-care provider is unavailable, due to a coronavirus.

Paid Time-EFMLA

- First ten days unpaid
- After ten days, two-thirds of the employee's usual pay
- Maximum = \$200 per day and \$10,000 in the aggregate

Job Restoration-EFMLA

Employer with fewer than 25 employees:

- The position no longer exists due to economic conditions or other changes in operating conditions of the employer (i) that affect employment; and (ii) are caused by a public health emergency during the period of leave.
- The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced.

Job Restoration-EFMLA

Employer with fewer than 25 employees:

- If the reasonable efforts fail, reasonable efforts to contact the employee if an equivalent position becomes available within 1 year from the date on which the qualifying need related to a public health emergency concludes; or within 1 year of the date that is 12 weeks after the date on which the Public Health Emergency Leave begins, whichever is earlier.

Unique Exceptions-EFMLA

- Employers with fewer than 50 employees are excluded from civil FMLA damages or equitable relief in an employee-initiated lawsuit
- Allows employers to elect to exclude health care providers and emergency responders
- DOL may exempt small businesses with fewer than 50 employees when the imposition of such requirements would jeopardize the viability of the business as a going concern

Tax Credits-Sick Leave and EFMLEA

- The tax credit equal to 100% of the wages paid
- Up to \$511 per day for personal sick leave
- Up to \$200 per day for sick leave to care for a family member or child who must remain at home due to school closings

Tax Credits-Sick Leave and EFMLEA

- The total family leave tax credit is capped at \$10,000
- No tax credits for leave paid under either Act will be provided to employers who already receive tax credits for a qualifying leave program under the 2017 Tax Cuts and Jobs Act

Unemployment Benefits

- Generally, an individual must be unemployed and must actively seek work
- Unpaid leave or furloughed would not typically qualify

Unemployment - Nebraska

Nebraska Department of Labor to waive:

- The one-week wait time for employees to start collecting benefits;
- The requirement that individuals actively seek work and are willing to take a new job; and
- Charges incurred by employers who file for unemployment benefits related to COVID-19
- Treat all unpaid workers as a result of COVID-19 as temporary layoff

Unemployment - Iowa

Employee terminated or has to stay home (and is not being paid) as a result of COVID-19, the individual can receive unemployment benefits if the following eligibility requirements are met:

Unemployment - Iowa

- The claimant worked and earned a minimum amount of wages (i.e., \$2,500) as an employee for an employer in the last 6 to 18 months; and
- Waived that claimant be (a) actively seeking work, (b) registered for work, and (c) able and available for work

The Federal WARN Act

- Business with more than 100 full-time workers is closing or laying off at least 50 people at a single site of employment
- Unforeseeable business circumstances: Not reasonably foreseeable at the time that 60-day notice would have been required (i.e. sudden, dramatic, and unexpected action or conditions outside the employer's control)
- Natural disaster: Direct result of a natural disaster such as a flood, earthquake, drought, storm, tidal wave, or similar effects of nature

Miscellaneous Considerations

- OSHA obligations
- NLRA rights
- The ADA and state/local law equivalents
- Coverage of COVID-19 testing

Employer Pandemic Questions

Is an employer obligated to pay an hourly-employee who is voluntarily quarantined, quarantined, or isolated?

Employer Pandemic Questions

May an employer direct salaried, exempt employees to take vacation or leave without pay due to government or recommended self-quarantine?

Does this impact the employee's exempt status?

Employer Pandemic Questions

May an ADA-covered employer require employees who have been away from the workplace during a pandemic to provide a doctor's note certifying fitness to return to work?

Employer Pandemic Questions

Under what scenarios are employees eligible to take FMLA on COVID-19 situations?

Employer Pandemic Questions

Can an employee stay home under FMLA or as an ADA Accommodation to avoid getting COVID-19?

Employer Pandemic Questions

What legal responsibility do employers have to allow parents or care givers time off from work to care for the sick or children who have been dismissed from school?

Employer Pandemic Questions

May employers send employees home if they show symptoms? Can the employees be required to take sick leave? May employers prevent employees from coming to work?

Employer Pandemic Questions

May an employer require an employee who is out sick to provide a doctor's note, submit to a medical exam, or remain symptom-free for a specified amount of time before returning to work?

Employer Pandemic Questions

May an employer take its employees' temperatures to determine whether they have a fever?

Dialogue and Questions?

Randy Stevenson – rstevenson@bairdholm.com

Scott S. Moore – smoore@bairdholm.com

Kelli Lieurance – klieurance@bairdholm.com

Morgan Krieser – mkrieser@bairdholm.com