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Department of Labor Wage and Hour Division Issues Employment Law Guidance Relating to COVID-19

In recent days, the U.S. Department of Labor Wage and Hour Division (WHD) has published a series of guidance documents for employers and employees relating to the COVID-19 pandemic, including answering questions that have arisen under the recently enacted Families First Coronavirus Response Act (FFCRA). Links to all of the COVID-19 related WHD materials are available here.

Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion – Employers' and Employees' Responsibilities

WHD published a series of questions and answers concerning employers' and employees' responsibilities under the FFCRA's Emergency Paid Sick Leave Act and its Emergency Family and Medical Leave Expansion Act, including:

- the effective date of the FFCRA (April 1, 2020);
- how to determine if your business is under the 500-employee threshold for the FFCRA's applicability;
- how businesses with fewer than 50 employees may elect the small business exemption if providing the FFCRA's leave would jeopardize the viability of the business;
- how to count hours worked by part-time employees;
- how to factor in overtime hours in calculating the pay due to employees;
- how to determine employees' regular rate of pay;
- how the paid sick leave and expanded family and medical leave benefits interact with each other; and
- how to determine if an employee has been employed for at least 30 days for purposes of expanded family and medical leave.

This question-and-answer document states the Department of Labor's position that the maximum amount of paid leave available to an employee under the FFCRA is $12,000, including $2,000 for paid sick leave and an additional $10,000 for expanded FMLA leave. The questions and answers are available here.

Paid Sick Leave and Expanded Family and Medical Leave Rights

In addition to the questions and answers, WHD published a fact sheet addressing employees' paid sick leave and expanded family and medical leave rights under the FFCRA, including:

- covered employers;
- eligible employees;
- qualifying reasons for leave;
- duration of leave; and

- calculation of pay.

The fact sheet is available here.

Employers' Expanded Family and Medical Leave Requirements

WHD also published a fact sheet addressing employers' expanded family and medical leave requirements under the FFCRA, including:

- covered employers;
- qualifying reasons for leave;
- duration of leave;
- calculation of pay;
- tax credits;
- notice to employees of FFCRA requirements;
- prohibited retaliation; and
- penalties for violations.

The fact sheet is available here.

COVID-19 and the Fair Labor Standards Act

Unrelated to the FFCRA, WHD published a series of questions and answers concerning COVID-19 and the Fair Labor Standards Act, including:

- the potential effect on employees' exempt status if the employer directs them to take vacation or unpaid leave;
- employers' obligations to employees under quarantine;
- encouraging or requiring employees to telework;
- the hourly rate or salary to be paid to employees who work from home;
- employers' obligation to cover any additional costs that employees may incur when they work from home; and
- the applicability of OSHA to employees' home offices.

The questions and answers are available here.

COVID-19 and the Family and Medical Leave Act

Also unrelated to the FFCRA and its FMLA expansion, WHD published questions and answers concerning COVID-19 and the Family and Medical Leave Act, including:

- employees staying home from work to avoid contracting a pandemic illness;
- parents taking time off from work to care for healthy children who have been dismissed from school;
- sending employees home if they show symptoms of pandemic illness;
- requiring employees who have been out sick to provide doctors' notes before returning to work; and
- employers changing their paid sick leave policies.

The questions and answers are available here.

Poster of Employee Rights

Finally, WHD published a poster summarizing employee rights to paid sick leave and expanded family and medical leave under the FFCRA, which is available here. Note that the poster identifies the maximum amount of paid leave as $12,000, reflecting WHD's view that the $2,000 maximum for an employee's first two weeks of leave is separate from, and in addition to, the $10,000 maximum for the subsequent 10 weeks of leave, for a total maximum of $12,000 per employee. Employers may satisfy the posting requirement by posting the poster in a conspicuous place on their premises, by e-mailing or mailing it to employees, or by posting it on an internal or external website. WHD also published frequently asked questions regarding the poster, which are available here.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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