Today’s Conversation

► FFCRA Leaves of Absence
► Other Options
► Q&A

Today’s Panelists

► Allyson Thomas, HR Services Partner, Alera ConnectHR
► Bob Bentley, Compliance Consultant, Alera West Region
► Joey Mertlich, Business Development, Wilson Albers
Applies to all private employers with fewer than 500 employees & some Non-Federal entities regardless of size

- Effective for leave taken between 4/1/2020 and 12/31/2020
- Assistance for employers via refundable payroll tax credit
- Fewer than 500 employees at the time leave is to be taken, include all US based full & part-time employees, employees on leave, temporary employees and joint employers under FLSA
DOL and IRS Information

- DOL FAQs: https://www.dol.gov/agencies/whd/pandemic/ffcra-questions
All employees once hired are eligible for up to 80 hours of paid sick time (pro-rated for Part-Time)

If Employee is sick or must quarantine: Paid at 100% of regular pay rate up to $511 per day ($5,110 max)

If Employee is caring for someone else: Paid at 2/3 of regular pay rate up to $200 per day ($2,000 max)

Provides paid leave if unable to work (or telework) because the employee:

1. Subject to federal, state or local quarantine or isolation order;
2. Has been advised by health-care provider to self-quarantine;
3. Has COVID-19 symptoms and is seeking a medical diagnosis;
4. Is caring for an individual who is subject to a quarantine or isolation order;
5. Is caring for a child whose school or day care center is closed due to COVID-19;
6. Is experiencing any other similar condition as specified by federal agencies
Expanded Family & Medical Leave Extension Act (EFMLEA)

- Amends FMLA to provide up to 12 weeks of job protected leave for a qualifying need related to public health emergency to employees employed for at least 30 days
- Qualifying need is when an employee is unable to work (or telework) due to caring for a child whose school or day care center is closed due to COVID-19
- Minor child under 15 during daylight hours unless special circumstances
- After 10-day elimination period, the rest of EFMLEA leave is paid at 2/3 regular pay rate based on normally scheduled hours, capped at $200 day (max $10,000)
- After elimination period, runs concurrently with regular FMLA
- Regular FMLA still only applies to groups with 50 + Employees and is not paid
Exceptions apply for small employers (under 50 employees) if the required leave would jeopardize the viability of the business

- Exception for EPSLA applies only when an employee takes leave under reason #5 (to care for a child whose school or place of care is closed due to COVID-19)
- Small employers are not exempt from paying under reasons #1-4 of EPLSA

DOL allows an employer to exclude any health care provider and anyone employed at any doctor’s office, hospital, health care center, clinic, nursing home, retirement facility, medical testing lab, etc.
DOL regulations says that employees are not eligible for EPSLA or EFMLEA if:

- Their employer closes the worksite
- They are furloughed (but the company remains open)
- Their hours are reduced

Congress didn’t address intermittent leave. DOL limited use of intermittent leave:

- Employee & employer must agree to the use of intermittent leave; and
- Limited to the employee’s need to care for child, cannot be used if employee or other is quarantined or has/may have COVID-19; trying to reduce spread of disease
Employers substantiate eligibility for tax credits with written request from employee that provides:

- Employee’s name;
- The date or dates for which leave is requested;
- Statement of the reason employee is requesting leave and is unable to work

If based on quarantine order or self-quarantine advice include:

- Name of governmental entity ordering quarantine, or
- Name of the health care professional advising self-quarantine, and
- If individual is not employee, name of person and relation to employee

Claim credit on Form 941, Employer’s Quarterly Federal Tax Return

Use Form 7200 for Advance Payment of Employer Credits Due to COVID-19
Early August, released decision ruling DOL overreached when writing regulations

- Requiring work must be available to qualify for leave
- Overbroad healthcare exemption
- Requirement that employees must have consent for intermittent leave
- Timing of documentation

What does this mean?

- DOL has not appealed or issued new regulations
- State of New York thinks rules should apply nationwide
- Probably can rely on DOL guidance for prior, carefully consider future claims
- Talk to counsel
Schools and FFCRA Leave

- If schools have in-person learning 2 days per week and online 3 days per week, does employee qualify for intermittent leave?
  - Not addressed by DOL, but probably yes

- If schools offer choice of in-person or online schooling can leave be denied to employees/parent that choose online schooling?
  - Not addressed by DOL and we need guidance
  - Schools likely need certain percentage to stay home to meet social distancing requirements, some parents may be told to keep children home effectively closing school
  - Probably grant leave but talk to counsel
Other Options
Most public and private schools will be closed for in-person learning

Unclear when schools will fully re-open

Talk to employees to get their input, one solution will not work for everyone

Work from home when possible

Consider flexible schedules, alternate or compressed work week, job sharing

Provide options to increase employee productivity due to reduced concern over children
Parent Pods

Many parents are creating pods among friends and neighbors to provide a safe place for children to gather and learn.

Formal/informal co-op of parents – safe place for children to gather and learn.

Group of parents may hire private instructor – virtually or in person.

Challenges –

- Safe space
- Locating suitable instructor/supervisor
- Potential cost
- Increased risk of spreading illness from children to adults
- Liability if deemed running a school or daycare
Some employers will be offering space for one or more days per week for at work childcare or school room.

Issues with available safe space, need instructor/supervisor, keeping area clean and increased risk of spreading illness.

Talk to agent and counsel about liability insurance and possible licensing issues.

This is a long-term temporary solution versus bringing your child to work day.
Create Environment of Information Sharing and Support

Set work hours with “blackout” periods during the day to accommodate non-work time for parents.

Hold parent brown bags and create Team channels.

Create access to support resources, college students, young professionals.

Consider job sharing, reduced hours, shift swaps, modified start and end times.

Off-set childcare costs through subsidies or financial assistance for lower wage employees.
Other Leaves of Absence

- Washington State and City of Tacoma Paid Sick Leave
- Allow use of other employer provided paid time off, post expiration of legally mandated leaves
- Unpaid administrative leave of absence
If you have additional questions:
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