



Covid-19 Workplace Considerations: What You Need to Know

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**Berchem Moses HR Bootcamp
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Agenda

- ▶ Families First Coronavirus Response Act (FFCRA)
- ▶ Essential/Non-Essential Businesses Under Executive Order 7H
- ▶ Business Closures, Layoffs, Furloughs
- ▶ Managing a Remote Workforce
- ▶ Managing On-Site Employees
- ▶ Other Considerations

FFCRA

- ▶ Enacted March 18; Effective April 1, through December 31, 2020
- ▶ Requires private insurance plans to provide free COVID-19 testing;
- ▶ Requires employers to provide emergency paid sick leave to workers affected by COVID-19 and expands family and medical leave; and
- ▶ Provides increased funding for state unemployment insurance programs, food stamp and nutritional programs and others

FFCRA

- ▶ DOL regulations expected April 2020
- ▶ DOL posted 3 information pages:
 - ▶ Most recently a Q&A Guidance:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
 - ▶ Guidance concerning Employee Paid Leave Rights:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>
 - ▶ Guidance concerning Employer Paid Leave Requirements
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

FFCRA

- ▶ DOL released poster and guidance on posting
 - ▶ Poster:
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
 - ▶ Guidance:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>
- ▶ Place in conspicuous place, email or post on website

Emergency Family and Medical Leave Expansion Act

- ▶ Expands employer coverage
- ▶ Expands employee eligibility
- ▶ Establishes paid benefits

Emergency FMLA Expansion

- ▶ FMLA applies to private sector employers with 50+ employees and public sector employers
- ▶ Expanded Employer Coverage under FFCRA
 - ▶ Affords benefits to employees of all private employers with fewer than 500 employees and public sector employers (regardless of size)

Emergency FMLA Expansion

- ▶ Eligibility normally contingent on working at least 1,250 hours during 12 months prior to FMLA leave
- ▶ Expanded employee eligibility under FFCRA
 - ▶ Eligible employee is anyone who has been employed for at least 30 calendar days
 - ▶ New (and only) reason for expanded FMLA leave:
 - ▶ Caring for child under 18 years of age whose school or childcare provider has been closed or is unavailable due to COVID-19 emergency

Emergency FMLA Expansion

- ▶ Expanded pay benefits
 - ▶ First 10 days unpaid (note employees can use accrued PTO)
 - ▶ After 10 days, employer obligated to pay full-time employees 2/3 of regular rate of pay for employee's regular weekly hours for up to 10 weeks
 - ▶ Part-time employees or those with irregular schedules paid at 2/3 of regular rate for average number of hours worked over prior 6 months of employment
 - ▶ Pay capped at \$200/day and \$10,000 total

Emergency Paid Sick Leave Act

- ▶ Applies to all employers with <500 employees
- ▶ Requires up to 80 hours of paid sick leave (pro-rated for part time employees)
 - ▶ Paid sick leave in addition to already accrued sick leave
- ▶ Upon request of employee, employer must permit eligible employee to use paid sick leave under FFCRA to cover initial 10 day period of unpaid leave under expanded FMLA
- ▶ Employees are eligible on day one of employment

Emergency PSL: Reasons

- ▶ Available to extent employee unable to work (or telework) for 6 specific reasons:
 1. Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
 2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

Emergency PSL: Reasons

4. Employee caring for an individual who is subject to quarantine or isolation order, or has been advised to self quarantine by a health care provider, due to COVID-19;
5. Employee caring for a son or daughter of such employee if school or place of care of son or daughter closed, or child care provider of such son or daughter is unavailable, due to COVID-19 precautions;
6. Employee experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with Secretary of the Treasury and the Secretary of Labor.

Emergency PSL: Benefits

- ▶ Full time employees: Full pay for leave due to reasons 1-3, and 2/3 pay for reasons 4-6
 - ▶ Full time defined as 40+ hours a week
- ▶ Part time employees: Pay calculated based on average two week period
- ▶ Employees that have worked <6 months: Calculated based on regularly scheduled hours

Emergency PLS: Benefits

- ▶ Payments capped at \$511 per day (\$5,110 total) for employees who take leave because of reasons 1-3.
- ▶ Payments capped at \$200 per day (\$2,000 total) for employees who take leave for reasons 4-6
- ▶ Paid sick leave provisions do not preempt state paid sick leave laws such as Connecticut's Paid Sick Leave Law
- ▶ Paid sick leave provisions do not diminish employee's existing rights under collective bargaining agreements or existing employer policies

FFCRA Exceptions

- ▶ Secretary of Labor will allow exclusion of:
 - ▶ All employees of:
 - ▶ Health care providers
 - ▶ Emergency responders
 - ▶ Businesses and non-profits with <50 employees
 - ▶ Exclusion only applies to FMLA+ and reason #5 of PSL
- ▶ Note that DOL “... encourages employers to be judicious when using” the exclusions for health care providers and emergency responders

Employer Tax Credits

- Employers (except government employers) required to pay Emergency FMLA Expansion and EPSL benefits eligible to receive refundable tax credits to ease financial burdens
- IRS Guidance issued March 23, 2020:
<https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>

Emergency UI and Access Act

- ▶ FFCRA provides relief to state UI offices to handle surge of claims and to expand UI coverage to as many claimants as possible
 - ▶ Technical assistance to states to help set up short-time compensation programs, which allow for partial UI benefits to workers whose employers have approved program to reduce hours to avoid layoffs or furloughs, if states do not already have them
 - ▶ Full federal funding for additional 26 weeks of extended benefits (EB) for states that experience increase of 10% or more in unemployment claims over previous year, comply with beneficiary access provisions, and trigger EB under existing UI law; normally, this requires a 50% match from states

Emergency UI and Access Act

- ▶ Grants to states totaling \$1 billion, paid out using same formula used for regular state UI administrative funding
 - ▶ First \$500 million paid immediately to all states as long as states doing basic things to ensure claimants can access their earned benefits
 - ▶ Second \$500 million reserved for states that have at least 10% increase in unemployment claims
- ▶ Interest-free loans to states to help pay state UI benefits through December 31, 2020

DOL Enforcement

- ▶ DOL will observe temporary “no enforcement” period until April 17
- ▶ Employer must act in “good faith”
 - ▶ Violations remedied and employee made whole as soon as practicable by employer,
 - ▶ Violations were not willful, and
 - ▶ Employer provides DOL written commitment to comply with Act in future

CT Executive Order 7H

- ▶ Effective March 23, 2020 8 pm
- ▶ Directs all businesses and nonprofit entities to utilize, to maximum extent possible, any telecommuting or work from home procedures that they can safely employ
- ▶ Directs that all “non-essential” businesses reduced on site employees by 100%
- ▶ Not applicable to municipalities

Essential v. Non-Essential Business

- ▶ DECD guidance issued on 3/22/20 defining “essential businesses”
- ▶ Categories include
 - ▶ Essential workers in 16 Critical Infrastructure Sectors, defined by DHS
 - ▶ Healthcare and related operations
 - ▶ Infrastructure
 - ▶ Manufacturing and corresponding supply chains
 - ▶ Certain retail and other services
 - ▶ Food and agriculture
 - ▶ Providers of basic necessities to economically disadvantaged populations
 - ▶ Construction
 - ▶ Services necessary to maintain safety, sanitation and essential operations for residences and buildings
 - ▶ Defense
 - ▶ Vendors of essential services/supplies needed to continuing operation of government and health, safety, welfare of public

Non-Essential Business

- ▶ If feasible, employees can still work from home
- ▶ Certain essential employees of non-essential businesses may still be allowed on site to minimum extent necessary to provide security, maintenance, receipt of mail packages
- ▶ What if remote work not possible?
 - ▶ Do not have to be paid if doing NO work
 - ▶ Layoff or furlough?
 - ▶ Eligible for benefits under FFCRA?
- ▶ Communicate with employees

Business Closures, Furloughs, Layoffs

- ▶ Does an employer pay non-exempt employees if employer temporarily ceases operations?
- ▶ Does an employer pay exempt employees if employer temporarily ceases operations?
- ▶ Can an employer reduce salaried exempt employee's usual salary because it reduces employee's work schedule?

Business Closures, Furloughs, Layoffs

- ▶ Furlough
 - ▶ Remains an employee
 - ▶ May still be eligible for health insurance benefits
 - ▶ Generally of shorter duration
- ▶ Furlough v. Layoff
 - ▶ Layoff severs employment relationship and benefits
 - ▶ Does not require “re-hire”
 - ▶ Eligible for unemployment benefits under both?

Business Closures, Furloughs, Layoffs: WARN Act

- ▶ Employers of 100+
- ▶ Mass Layoff: Reduction in force that results in employment loss during any 30-day period for (a) at least 33% of employees and at least 50 employees (excluding part-time employees) or (b) at least 500 employees, excluding part-time employees
- ▶ Plant Closure: Permanent or temporary shutdown of single site of employment that results in employment loss of 6 months or more for 50 or more employees, excluding part-time employees
- ▶ Summary: No WARN event where employer:
 - ▶ Furloughs or lays off 50 employees or less
 - ▶ Lays off or reductions in hours lasts six months or less
- ▶ Exceptions to normal notice requirements
 - ▶ If caused by business circumstances that were not reasonably foreseeable as of time notice would have been required or natural disaster, or faltering business
- ▶ Mini WARN?

Unionized Workplace

- ▶ What does your collective bargaining agreement say?
 - ▶ Language re: layoffs, reductions in force
 - ▶ Leave provisions
 - ▶ Management Rights Clause
 - ▶ Work assignments
- ▶ Duty to bargain
 - ▶ Pay freeze?

CT DOL UI Benefits Guidance

- ▶ March 2020 UI Guidance FAQs about COVID-19 for workers and employers
 - ▶ Employers should issue Unemployment Separation Packet for separated employees, but employees may be able to file claim faster with just employer's registration number
 - ▶ Department offers SharedWork program as alternative to layoff
 - ▶ Allows reduction in hours by as much as 60% while employees collect partial unemployment benefits
 - ▶ Available to all employers with 2+ FT or permanent PT employees
 - ▶ Reduction of work not less than 10% or more than 60%

CARES Act

- ▶ Effective March 27, 2020
 - ▶ \$2 trillion in relief to individuals, businesses, and state and local governments.
 - ▶ Enhanced benefits to employees and relief for certain employers under state Unemployment Compensation system
- ▶ Expanded eligibility for employees
- ▶ Increase in benefits
- ▶ Elimination of waiting week
- ▶ Relief for reimbursing employers
- ▶ Short-time compensation (SharedWork Program)

Managing Remote Workforces

- ▶ Wage and Hour Considerations
 - ▶ Continue to track non-exempt employee hours worked
 - ▶ Meal breaks
 - ▶ Clear policies re: OT, off the clock work, breaks

Managing Remote Workforces

► Privacy Considerations

► Provide notice to employees of possible coronavirus exposure/diagnosis in workplace but be mindful of unnecessary disclosure of affected employees' personal identity which may expose employer to liability under HIPAA, ADA

Managing Employees Reporting to Work

- ▶ Take employee temperatures (allowed during pandemics)
- ▶ Instruct employees to stay home if sick (except to get medical care)
- ▶ Provide appropriate PPE, sanitizers, and disinfectants
- ▶ Clean AND disinfect frequently touched surfaces
- ▶ Limit business travel
- ▶ Encourage social distancing
- ▶ Eliminate/minimize in-person meetings
- ▶ Communicate with employees re: status, changes to business continuity plan

Managing Employees Reporting to Work

- ▶ Follow CDC's Guidance on How to Protect Yourself
 - ▶ <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>
- ▶ Instruct employees to follow CDC's guidelines, and send out frequent reminders
 - ▶ WASH HANDS
 - ▶ AVOID CLOSE CONTACT (i.e., “social distancing”)

Other Considerations

- ▶ Relaxed I-9 Rules
- ▶ Waiver of statute of limitations and other deadlines, time requirements
- ▶ ADA
- ▶ Regular FMLA
- ▶ OSHA
- ▶ Other
 - ▶ Predictive scheduling laws
 - ▶ State Executive Orders

What's Next?

- ▶ Possible expansion of FFCRA rights?
- ▶ “Opening” the country/economy?
- ▶ Further orders to shelter-in-place?
- ▶ Quarantine orders?
- ▶ Isolation orders?

Resources

<https://www.berchemmoses.com/connecticut-labor-employment-law-journal/>

<https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

DEDC.covid19@ct.gov

<https://portal.ct.gov/-/media/Coronavirus/COVID-19-FAQs.pdf?la=en>

<https://www.dol.gov/agencies/whd/pandemic>

https://www.eeoc.gov/facts/pandemic_flu.html

https://www.osha.gov/Publications/influenza_pandemic.html

<https://www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx> (paid membership required)

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