

## Coronavirus: Employment and HR Concerns March 24, 2020

### Submitted Questions with Answers

Q. How do we obtain a waiver for the 50 employees or less exemption and what constitutes an exemption?

A. APPLICATION IS TO BE MADE TO THE US Department of Labor. The DOL states that it will issue exemption criteria in forthcoming regulations and employers wishing to seek the exemption should document why their business meets such criteria, but not send any such documentation to the DOL.

Q. Our workers have regular rates around \$30.00 hour but also work a lot of prevailing wage work- \$70-\$80 an hour. How would I calculate the layoff pay and at what rate?

A. LOOK TO AN AVERAGE OVER THE PRIOR 6 MONTHS AND TO THE GUIDELINES MEANT TO ASSIST EMPLOYERS TO BE PUBLISHED BY SECRETARY OF LABOR NO LATER THAN APRIL 2.

Q. I was wondering if the normal Workshare rules will apply, (by Dept, etc.) or if the requirements are being relaxed to accommodate sporadic reduction in hours. Does the company need to apply before reducing hours, or can an employee apply directly if there hours are reduced?

A. NORMAL WORK SHARE RULES SHOULD APPLY

Q. Just looking for info on employee expanded family & medical leave act, is the employer expected to pay this to eligible employees?

A. YES, BUT WILL RECEIVE A TAX CREDIT.

Q. Where can small business less than 50 file for exemption with the DOL?

A. SECRETARY OF LABOR OR DEPT. OF LABOR WAGE & HOUR DIVISION SHOULD BE ISSUING REGULATIONS EXEMPTING SMALL EMPLOYERS ( UNDER 50 EMPLOYEES) FROM NEED TO PAY EMERGENCY PAID SICK LEAVE TO CARE FOR A CHILD IF SCHOOL OR CHILD CARE NOT AVAILABLE, IN THOSE INSTANCES WHERE IMPOSITION OF PAYMENT REQUIREMENTS WOULD JEOPARDIZE THE VIABILITY OF THE BUSINESS.

REMEMBER THAT COVERED EMPLOYERS WHO PAY SICK TIME AND/OR FOR FMLA EXPANSION WILL BE ABLE TO UTILIZE PAYROLL TAX CREDITS TO COVER THE COST OF WAGES PAID TO EMPLOYEES UNDER THE ACT. THE REFUNDABLE TAX CREDIT IS EQUAL TO 100% OF QUALIFIED PAID SICK LEAVE WAGES REQUIRED TO BE PAID UNDER SICK LEAVE AND FMLA LEAVE COVERED BY THE ACT. I UNDERSTAND THIS TO MEAN THAT EMPLOYERS WILL BE REIMBURSED FOR SUCH PAYMENTS TO THEIR EMPLOYEES.

Q. What if the employer is laying off due to an indefinite reduction in workforce? Can the unemployment insurance claim and waive the requirement to stay in touch weekly with their former employer?

A. IN THIS INSTANCE, PROBABLY.

Q. We are already experiencing employees that are refusing to work. How should we be handling this issue?

A. IF THEIR REFUSAL TO WORK IS REASONABLE GIVEN THE CIRCUMSTANCES (LIVE WITH ELDERLY FATHER, WIFE IS SICK AND SEEKING CORONAVIRUS TEST, EMPLOYEE IS IMMUNO-SUPRESSED, EMPLOYEE HAS ASTHMA) THE EMPLOYEE CANNOT BE DISCIPLINED FOR REFUSAL TO WORK.

Q. Can we ask for doctors note to confirm that this condition exists?

A. YES, BUT BECAUSE ALL MEDICAL PROFESSIONALS ARE CURRENTLY OVERWHELMED, CONFIRMATION MAY BE PROVIDED BY EMPLOYEE 3 WEEKS AFTER START OF THE LEAVE.

Q. Does this take effect now or April 2?

A. WE ARE NOW INFORMED THAT THE FFCRA GOES INTO EFFECT ON APRIL 1. THE DOL WILL NOT BE ENFORCING NONCOMPLIANCE FOR THE FIRST 30 DAYS AFTER THE EFFECTIVE DATE OF THE ACT (APRIL 1), SO LONG AS THE EMPLOYER HAS ACTED IN GOOD FAITH, GOOD FAITH IS "WHEN VIOLATIONS ARE REMEDIED AND THE EMPLOYEE IS MADE WHOLE AS SOON AS PRACTICABLE BY THE EMPLOYER, THE VIOLATIONS WERE NOT WILLFUL, AND THE (DOL) RECEIVES A WRITTEN COMMITMENT FROM THE EMPLOYER TO COMPLY WITH THE ACT IN THE FUTURE.