

SURVIVING COVID-19 AS AN EMPLOYER

THE LEGAL IMPACTS ON YOUR WORKPLACE

PRESENTED BY:

THE KRIZNER GROUP

AN EMPLOYMENT LAW BOUTIQUE



APRIL 2, 2020

Reorganization Decisions

- Protected Class Considerations
- Plaintiff's Attorneys Are Already Preparing...
- A Word Picture: The Sifter Approach

Reorganization Decisions

- 3 Parts Of A Reorganization Memorandum
 - Economic Circumstances, Other Cost Savings
 - The Screens
 - The Impact
 - *One Last Add: The Planned Timing*

Reorganization Decisions

■ Other Considerations

- Deep Enough...But Not Too Deep
- Splicing Hurts
- Utilizing Capable Counsel Is Key
- Timing & Communication

Symptomatic Employees

- See Symptoms? Send them home.
- Return when fever-free for 24 hours
- Medical Exams
- Medical Clearance

Revealing Employee Diagnosis

- Inform Employees of Potential Exposure
- Close Co-workers – 14-Day Isolation From Work
- Inform Others (Clients, Service Providers, etc.)
- **Don't Reveal Name**

Telework

- Appropriate accommodation, says DOL
- Job Description
- Expectations
- Policy
- Agreement

Families First Coronavirus Response Act

Considerations for Government

- Follow guidance from the CDC, as well as state and local government officials, regarding strategies to limit disease spread
- Workers should be encouraged to work remotely when possible and focus on core business activities.
- Non-mandatory activities should be delayed until the resumption of normal operations.
- Enlist strategies to reduce the likelihood of spreading the disease.
- Implement business continuity, pandemic or emergency operations plans
- Emergency managers and critical government employees need to establish and maintain lines of communication

Families First Coronavirus Response Act

Essential Critical Infrastructure Workforce

- Healthcare/Public Health
- Law Enforcement/Public Safety/Other First Responders
- Energy
- Water and Wastewater
- Transportation and Logistics
- Public Works/Infrastructure Support
- Communications/IT
- Shelter/Housing
- Other (Maintenance, Elections, Judicial)

Families First Coronavirus Response Act

Emergency Paid Sick Leave

- Employee Unable to Work
 - *Employee Quarantined*
 - *Experiencing COVID-19 Symptoms/Seeking Medical Assistance*
- Full Pay Up to Two Weeks
- No Length of Service Requirement

Families First Coronavirus Response Act

Emergency Paid Sick Leave

- Employee Unable to Work
 - *Caring for Quarantined Individual*
 - *Caring for Child(ren)*
 - *Substantially Similar Conditions*
- 2/3 Pay Up to Two Weeks
- No Length of Service Requirement

Families First Coronavirus Response Act Family & Medical Leave Act Expansion

- Employee Unable to Work
 - *Caring for Child(ren)*
- 2/3 Pay Up to Ten Weeks
- 30 Days of Employment Required

Families First Coronavirus Response Act

Other Info

- Sunsets on 12/31/20
- This Leave Comes First and is in Addition
- Employee Not Responsible to Find Replacement
- Create New Pay Types (EPSLA and EFMLA)

New Posting Requirement



The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 10 weeks more of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---|---|
| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|---|---|

ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
[dol.gov/agencies/whd](https://www.dol.gov/agencies/whd)



WH1422 REV 03/20



To Find The Poster:

www.dol.gov

For Employers

Resources

Posters

THE KRIZNER GROUP
AN EMPLOYMENT LAW BOUTIQUE

Returning Employees

- Fever-free for 24 hours (Allow, Don't Require.)
- Medical Clearance
- Protect Employee Health Information
- Other Restrictions

Question #1

Regarding the FMLA Expansion, does the time away have to be continuous? We're wondering if the employee has the right to take three days off this week and two days off next week since this can be taken for child care purposes.

Question #2

What if my employees were out BEFORE 4/1/2020? Do I have to provide additional leave now?

Question #3

Does the new form of FMLA leave add 12 more weeks of leave, if an employee has already used FMLA for another purpose this year?

Question #4

Can an employee claim workers compensation for getting corona virus?

Question #5

What do I do if my employees are refusing to come to work? I know they're frightened, but we have a job to do.

Question #6

Is the leave provided in addition to accumulated PTO or can accumulated PTO be applied for this required leave?

Question #7

Does this leave apply if I send an employee home because of flu-like symptoms?

Question #8

I have an employee over age 65 who is not considered part of the “Essential Critical Infrastructure Workforce.” She wants to work. Can I allow it?

Question #9

My Clerk has a significant underlying medical condition. Does the Governor's Executive Order issued yesterday qualify him for the Emergency Paid Sick Leave?

Question #10

Do both parents get 12 weeks of FMLA to care for a child that is out of school, if it's a two-parent household?

Need More?

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