COVID-19
Human Resources Implications

Presented By:
Julie A. Proscia, SmithAmundsen LLC
Sandra L. Rappaport, Hanson Bridgett LLP
Sheryl J. Willert, Williams Kastner
FAMILIES FIRST CORONAVIRUS RESPONSE ACT

• FOCUSES ON:
  • Paid Leave
  • Expansion Of FMLA
  • Expansion Of Unemployment Benefits
PAID SICK LEAVE

• WHO IS COVERED?
  • <500 Hundred Employees And Government Employers
  • Employees Unable To Work At Home Or Remotely Because:
    • Quarantining Because Of Medical Directive
    • Governmental Directive To “Stay At Home”
    • Caring For Self Or Family Or Household Member Subject To Quarantine Order
    • Symptomatic And Seeking Diagnosis
    • Caring For Children With Closed Schools Or No Caregiver Due To Medical Emergency
  • Other Reasons As Directed By HHS
HOW MUCH LEAVE AVAILABLE?

• Maximum 80 Hours For FT Employees/Avg Of Hrs Over Standard 2 Week Period For PT Workers – Can Only Use This Once

• This Leave Added To Any Paid Leave Required By State/Local Law; Can Be Added To Available Under Other Leave Entitlements If Employer Agrees

• May Be Used Intermittently With Employer Agreement

• Rate Of Pay: Higher Of Regular Rate/Applicable Minimum Wage

• Regular Rate = Average Pay, Including OT/Tips/Commissions Last 6 Months

• Maximum: $511/Day And $5110/Total

• Effective Starting April 1, 2020!
• Exception: Caring For Ill Family Member/No School Or Child Caregiver/Other Similar Condition
  • Payment At 2/3rds Regular Rate – Capped At $200/Day And $2,000 Total

• FFCRA Leave:
  • In Addition To Other State/Local Mandated Leave

• Potential Exemptions:
  • Employers With <50 If Compliance Threatens Viability

• Employer Benefit:
  • Tax Credit For 100% Through Social Security Tax Credit For Qualified Wages Paid Under Act Through Covered Period
FFRCA PAID FAMILY AND MEDICAL LEAVE

• WHO IS COVERED?
  • Employers <500 employees/government employers
  • Employees working more than 30 days for employer regardless of US location

• FFRCA LEAVE QUALIFICATIONS:
  • COVID-19 Infection
  • Childcare/Day Care Issues
  • Inability To Work Remotely

• EXEMPT EMPLOYERS:
  • >500 employees
  • <50 if business viability impacted
  • Healthcare/emergency responders
Benefit Limitations:
- $200/DAY - $10,000 TOTAL
- AFTER 10 DAYS 2/3 PAY AT RATE OF REGULAR RATE OF PAY

Recoupment:
- 100% through Tax Credit - quarterly

How Different from Regular FMLA:
- FFCRA limited to COVID-19 vs. other serious health conditions
- No government reimbursement
FFRCA: UNEMPLOYMENT COMPENSATION

• Effective Dates: 1/27/2020 – 12/31/2020
• Eligibility:
  • Same as Paid Sick Leave
  • Scheduled to start but can’t due COVID-19
  • Became head of household due to head of households death
  • Resignation the direct result of COVID-19
  • Fear of contracting COVID-19 does not count
FFRCA: UNEMPLOYMENT COMPENSATION (CONT’D)

• Expansion:
  • Additional 13 weeks at $600 per week – Total 39 weeks
  • No waiting period for the additional weeks
  • Non-traditional individuals covered including independent contractors, self
    employed, gig workers, employees who have not worked the requisite number
    of hours
  • Extending benefits to furloughed, reduced hour works, temporary layoffs

• Recoupment:
  • Tax credits

• State Based Programs:
  • Many states have broader and different programs in addition to traditional
    unemployment, e.g. Arizona, Washington and others have Shared Work programs
    and Washington has a Standby program.
PENALTIES

• Can be avoided if:
  • Errors made between March 18 and April 18, 2020
  • Violations not willful
  • Acting reasonably and in good faith
  • Remedy violations ASAP
  • Promise DOL in writing to comply in the future
CARES PAYCHECK PROTECTION PROGRAM

• $350 BILLION In Small business loans
• Fully guaranteed through 12/21/2020
• Interest not to exceed 4%
• 10 year maturity
• Eligibility:
  • Employers with < 500 employees
  • Employers in hospitality/lodging or food service industries if employee headcount does not exceed 500 per location and annual income is less than $500 million
CARES PAYCHECK PROTECTION PROGRAM (CONT’D)

• Limited to lesser of:
  • Average monthly payroll costs for 1 year prior to date of loan multiplied by 2.5 and any loan taken after 1/31/2020 through June 30, 2020 that is refinanced into CPPP loan or $10 million

• Payroll costs = Sum of:
  • Compensation to employee or independent contractor + tips/commissions + vacation pay + family, parental, sick, or medical leave + severance + retirement benefits + group health costs including premiums + state and local taxes on employee compensation
CARES PAYCHECK PROTECTION PROGRAM (CONT’D)

• Excluded Payroll Costs:
  • Payroll taxes; individuals living outside U.S.; individuals who make more than $100,000 annually or costs for which credit is being granted under FFCRA

• Partial Tax Free Loan Forgiveness:
  • The sum of the following payments made by the borrower during the 8-week period beginning on the date of the loan: payroll costs (as defined above), mortgage interest, rent, and certain utility payments.

• Reduced Forgiveness:
  • If the employer either: reduces its workforce during the 8-week covered period when compared to other periods in either 2019 or 2020, or reduces the salary or wages paid to an employee who had earned less than $100,000 in annualized salary by more than 25% during the covered period. The reduction can be avoided if the employer rehires or increases the employee’s pay within an allotted time frame.
CARES PAYCHECK PROTECTION PROGRAM (CONT’D)

• How can you get the loan?
  • Must apply in writing, submit specific documentary evidence verifying payments.
SBA LOANS

• Economic Injury Disaster Loans:
  • Up to $2,000,000
  • Uses: pay fixed debts, payroll, accounts payable and other bills that can’t be paid because of the disaster’s impact.
  • Interest Rates: 3.75% for small businesses, non-profits is 2.75%
  • $10,000 grant if apply for it within 3 days of applying for loan
OTHER CONSIDERATIONS

• Wage and Hour:
  • Non-Exempt employees:
    • No pay if no work
  • Exempt employees:
    • Employer mandated time off - must be paid unless taken in full week increments
    • Unpaid if initiated by the employee and in full day increments

• Impact of Warn:
  • Layoffs:
    • 50 or more employment losses of employees who have more than 6 months in prior year or more than 20 hours a week where layoff will last more than 6 months
    • Must give 60 day written notice

• Mini Warn Acts:
OTHER CONSIDERATIONS (CONT’D)

• OSHA:
  • Safe Work Environment
  • Recording and Reporting Requirements
    • Must track Covid 19

• ADA:
  • Adhere to non-discrimination requirements

• Collective Bargaining Responsibilities:
  • Adhere to contract provisions re: bargaining
HR/BUSINESS BEST PRACTICES

• Review HR Policies:
  • Monitor Required Postings
  • Absentee policies
  • Temperature monitoring policies
  • Medical verification requirements

• Review Insurance Policies
• Examine Banking Relationships
• Strengthen Business Sanitation Standards
• HIPAA
• COBRA
• Retirement Contributions
QUESTIONS?