Contagion II: MORE Practical Advice for NC Employers Wrestling with COVID-19

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We wrote just four days ago that the world seems to have shifted beneath our feet - to have become alien and dangerous.

That, in recent days, hasn’t become less true. For employers, it has also become far more complicated thanks to passage on March 18 of the federal "Families First Coronavirus Response Act" ("FFCRA" or the "Act"), in a quick response to economic disruptions already caused by and expected from the 2019 novel coronavirus (COVID-19) pandemic.

We wrote in our first piece that, if you employ 50 or more employees counted in the specific way required by law, then you must comply with the Family and Medical Leave Act of 1993 ("FMLA"). And that related law may change soon if the FFCRA is enacted into law.

That's exactly what's happened.

The text of the Act can be found here. It's a massive piece of legislation, consisting of eight "divisions" or "acts" and, among them, numerous "titles," spread across more than 40 dense pages. It will take effect on April 2 and expire on December 31,
2020.

The time for employers to become familiar with it is now. We have already published an article about the Act here.

The two most critical components of the FFCRA for employers are (1) the "Emergency Paid Sick Leave Act" and (2) the "Emergency Family and Medical Leave Expansion Act" ("Emergency FMLA Act"), both of which are as momentous as they sound. They are intended, generally, to provide for paid-leave from work to employees who must miss work as a result of COVID-19.

In a nutshell, and we hope for easy reference, here are some of the most critical points (but this isn’t intended to serve as a comprehensive summary):

**Emergency Paid Sick Leave Act**

- **Who's covered:** Covers all private employers with fewer than 500 employees and all government employers. There may be regulatory exceptions for businesses with fewer than 50 employees if providing leave would jeopardize the viability of the business and for certain health care providers and emergency responders.

- **Leave Amount and Usage:** Covered full-time employees are entitled to 80 hours of paid leave. Part-time employees are entitled to less. Covered employees are entitled to paid leave for specified purposes related to COVID-19, such as when an employee cannot work or "telework" because the employee is under a federal, state, or local quarantine or isolation order; has COVID-19 symptoms and is seeking a medical diagnosis; or is caring for a son or daughter where, due to COVID-19 precautions, the child's school has been closed.

- **Payment for leave:** Paid leave must be paid at the employee's regular rate of pay, but leave used to care for another individual is paid at two-thirds of the employee's regular rate of pay. Paid leave is capped at $511 per day and $5,110 in total for the employee's own health condition or quarantine, and at $200 per day and $2,000 in total for leave necessitated to care for someone else.

The good news is that private employers can claim a tax credit equal to "the qualified sick leave wages paid" by the employer.

**Emergency Family and Medical Leave Expansion Act**

- **Who's covered:** All private employers with fewer than 500 employees and all public agency employers, but there may be regulatory exemptions for so-called "public health emergency leave" if providing such leave would jeopardize the viability of businesses with fewer than 50 employees.

- **Leave Amount and Usage:** There is a new category of protected leave for employees with a "qualifying need related to a public health emergency". That means cases in which the employee cannot work or "telework" due to the need to care for a son or daughter under 18 years of age if, because of a public health emergency regarding COVID-19, the child's school or place or care has been
closed or the child's care provider is unavailable. The total amount of available leave is the same as under the FMLA (i.e., 12 weeks within a period of 12 months period), but under the Emergency FMLA Act the first 10 days are unpaid and the remaining days of leave are paid.

- **Payment for leave:** After the first ten days of leave, which again are NOT paid, the employee must be paid at a rate that is at least two-thirds of the employee's regular rate of pay based on the employee's regular schedule. And there are caps. The paid leave cannot exceed $200 per day and $10,000 in the aggregate.

There's much more to all this than that, which we'll address in the coming days. In the meantime, stay safe out there.

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