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TOP LABOR & EMPLOYMENT

COVID-19 sparks federal, state response with paid leave

By Grant P. Alexander

The COVID-19 pandemic turned the world upside down in numerous respects, leading to various policy and legislative changes to the workplace both nationally and here in California. At the outset of the pandemic in March 2020, in response to the economic shutdown and the requirements for remote work in a vast majority of industries across the country, President Donald Trump signed H.R. 6201, the Families First Coronavirus Response Act, which impacted employers with fewer than 500 employees.

Under the FFCRA, employers were required to provide up to 80 hours of paid sick leave to all employees who were unable to work (or telework) due to six separate categories relating to COVID-19, including having COVID-19 or COVID-19-related symptoms, or caring for a loved one with COVID-19 symptoms. The FFCRA applied to both full-time and part-time employees. After the FFCRA was passed, the California Legislature passed Assembly Bill 1867, which provided the same benefits to employees working for employers with 500 or more employees. The bill was designed to provide workers with extended benefits in those cases where vacation or sick time was not available to cover the wages lost while workers were forced to remain at home during various state lockdown orders.

The FFCRA also expanded the Family Medical Leave Act to require employers to provide up to 12 weeks of FMLA leave for the limited circumstances of an employee who was unable to work (or telework) due to a need to care for a son or daughter under 18 years of age if the child's school or place of care had been closed, or the child's childcare

provider was unavailable due to a public health emergency related to COVID-19.

The FFCRA was designed as a temporary stopgap measure, and was supposed to sunset on Dec. 31, 2020. However, on Dec. 27, 2020, President Trump signed legislation introduced by Congress, extending tax credits on the paid leave provided under the FFCRA to March 31, 2021, in an attempt to induce employers to continue to provide the same paid sick leave benefits.

State Legislature Provides Additional Paid Leave to Employees for COVID-Related Absences

On March 19, with the impending expiration of the tax credit extension provided by the federal government, Gov. Gavin Newsom signed Senate Bill 95 into law, providing extended paid leave (an additional 80 hours) to employees who take a leave of absence from their jobs for COVID-19-related reasons. The bill was designed as an extension on the leave benefits provided by the FFCRA referenced above.

The new law expanded the prior relief provided and applies to all California employers who have 25 or more employees. Additionally, the new law applies to employees who are unable to work (or telework) because of COVID-19-related reasons. Employees who are already working remotely, who cannot "telework" because of COVID-19-related reasons are now eligible for the extended paid leave.

The new law contains seven separate "qualifying reasons" for requesting the paid leave. An employee who meets one of the following scenarios can qualify for the paid leave:

- The employee is subject to a quarantine or isolation "period" related to COVID-19;
- The employee is attending an appointment to receive a

COVID-19 vaccine;

- The employee is advised by a health care provider to self-quarantine or isolate due to COVID-19;

- The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis from a healthcare provider;

- The employee is experiencing symptoms related to a COVID-19 vaccine that prevents the employee from engaging in work;

- The employee is caring for a family member (minor or adult child, parent, spouse, domestic partner, grandparent, grandchild, or sibling) who is subject to a quarantine or isolation period, or who has been advised to self-quarantine; or

- The employee is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

Full and part-time employees are eligible for the new paid leave. If an employee is kept from the workplace and is told to work remotely for any reason related to COVID-19 (such as for quarantining), the employee may be eligible to take paid leave under SB 95.

The new law also has a retroactivity clause. According to the new law, if an employee took a leave of absence on or after Jan. 1, 2021, that would have qualified for paid leave under the new law, and the employer did not provide paid leave, upon request from the employee, the employer is required to provide the employee with retroactive payment to cover the period of the leave. This law provides paid leave in addition to other paid leaves which may be provided under state law. The payment must be made before the payday for the next full period after the request is made by the employee and must be memorialized in the employee's regular wage statement.

The new paid leave went into effect on March 29, 2021, and employees are eligible to take the supplemental paid leave through Sept. 30, 2021. California employers are required to post notice of this new law.

Employers should be prepared for such requests from employees who not only seek to take paid leave for COVID-19-related reasons, but who also seek reimbursement for unpaid leaves taken since Jan. 1, 2021, for those same COVID-19-related reasons. Employers should also remember that they may not request medical certification for the reason(s) taken for the leave. The California Department of Industrial Relations has provided an updated FAQ page for employers, which provides additional information. While California has shown signs of returning to normal with the June 15 "reopening," we may see additional benefits-related legislation passed to accommodate continued closures and remote-work as we approach September 2021. ■

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