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State and Local Update

Timely, topical insights on a variety of payroll and reporting issues.

Topics covered in this issue:

Leave

Colorado Expands Coverage and Amount of Leave Provided Under HELP

We previously reported that on March 11, 2020, the Colorado Department of Labor and Employment issued Colorado Health Emergency Leave with Pay ("Colorado HELP") rules that require certain employers to provide paid sick leave for employees with flu-like symptoms who are being tested for COVID-19. The rules took effect immediately and remain in effect for 30 days or for the duration of the declared state of emergency, whichever is longer, up to 120 days.

The Colorado HELP rules originally covered employers engaged in the following industries or workplaces:

- Leisure and hospitality;
- Food services;
- Child care;
- Education at all levels and related services, including but not limited to cafeterias and transportation to, from, and on campuses;
- Home health care (working with elderly, disabled, ill, or otherwise high-risk individuals);
- Nursing homes; and
- Community living facilities.

The Colorado Department of Labor and Employment (CDLE) amended its HELP rules to also cover workers in the food and beverage manufacturing industry, effective April 3, 2020.

HELP Expanded Coverage

On April 27, 2020, the Colorado Department of Labor and Employment expanded the HELP rules in response to the state allowing certain businesses to operate at greater capacity. Key portions of the April 27, 2020, amendments to the HELP rules are highlighted below.

Covered Employers

The amended HELP rules cover employers engaged in, or employing workers in, specific fields. The rules previously covered the fields of leisure and hospitality, food and beverage manufacturing, food services, retail establishments that sell groceries, child care, education at all levels (including related services), home health care, nursing homes and community living facilities. The amended rules expand the covered fields to include the following:

Retail: Establishments engaged in retailing merchandise and rendering services incidental to the sale of merchandise to the general public for personal or household consumption, or to businesses and institutional clients. Examples include building material and garden supply stores; clothing and accessories stores; health and personal care stores; pharmacies; electronics and appliance stores; furniture and home furnishing stores; motor vehicle and parts stores; office supplies, stationary, and gifts stores; food and beverage stores; grocery stores and retail establishments that sell groceries; general merchandise stores, including warehouses and supercenters; gas stations; tobacco stores; liquor stores; sports, hobby, musical instruments, and bookstores; pet and pet supplies stores; used merchandise stores, pawn shops; and manufactured and mobile home dealers.

Real estate sales and leasing: Establishments primarily engaged in selling, renting, or leasing real estate, and establishments providing related services. Examples include real estate agencies; real property management; and rental and leasing services.

Offices and office work: All work performed in an office environment, rather than in non-office settings such as factories, farms, construction sites, or other non-office sites away from the employer's physical location. This category includes employers that are predominantly located in offices (e.g., law firms), as well as the portion of any employer's operations performed in an office setting (e.g., an administrative office housed within a factory).

Elective health services: Those medical, dental, or other health-service employees who work predominantly on elective procedures. This category includes establishments that engage predominantly in elective procedures (e.g., cosmetic surgery), even if a portion of their work is non-elective (e.g., emergency surgeries performed by cosmetic surgeons).

Personal care services: Establishments that provide appearance care services or other personal care to consumers, as well as establishments that provide pet or animal care such as boarding, grooming, sitting and training pets, but excluding veterinary care. Examples include hair salons and barber shops; hair styling; nail salons; make-up and cosmetology salons, including permanent make-up; spas, day spas, and massage therapy establishments; tattoo or piercing parlors; tanning salons; animal shelters; pet boarding services and kennels; animal grooming services; and pet training and obedience services.

Amount of Leave Employees Can Use

Previously, employers were required to provide up to four days of paid sick leave. Now, they must provide up to two weeks – a maximum of 80 hours – of paid sick leave.

Reasons Employees Can Use Leave

Employees can take leave if they have flu-like (or, now, respiratory illness) symptoms and are being tested for COVID-19, or if they are under instructions from a health-care provider (or, now, an authorized government official) to quarantine due to risk of COVID-19.

No Requirement to Provide Additional Paid Leave

As with the original HELP rules, the amended Rules do not require an employer to offer additional days of paid sick leave if it already offers all employees an amount of paid leave sufficient to comply with the rules. However, an employee who already exhausted their paid leave under an existing employer policy, but then qualifies for paid sick leave under the HELP rules, is entitled to the additional days of paid leave.

When Leave Ends

Under the original HELP rules, leave ended when an employee received a negative COVID-19 test. Now, an expanded list of conditions must be satisfied, including: 1) a negative test; 2) the employee is fever-free for 72 hours; and 3) the employee's other symptoms have resolved. However, leave cannot end before an employee has been off for at least seven calendar days, or 10 calendar days for health-care workers.

Documentation Substantiating Absences

The amended HELP rules reinforce that employers cannot require documentation either before leave begins or during an absence, while also appearing to relax documentation standards. For example, although the original rules did not specify the type of documentation employees were required to provide, the amended rules state that employees can provide a self-drafted written statement instead of documentation from a health-care provider.

Rate of Pay

Previously, employers were required to pay employees for up to four days at 100 percent of their regular rate of pay. Now, however, up to 80 hours of leave must be provided and paid at two-thirds of an employee's regular rate of pay.

No Retroactive Application

The amended HELP rules do not apply retroactively. Thus, for example, if an employee completed a COVID-19 test and received a test result before the amended rules covered the employer's industry, the employer is not required to provide any amount of paid leave for any precoverage time. However, if the employee is missing work because a health-care provider instructed the employee to quarantine due to a risk of having COVID-19, the employee will now be eligible for additional paid leave, even if the prior maximum of four days was already exhausted, up to a maximum of two weeks (80 hours).

Interaction with Other Laws

If other federal, state and/or local laws apply, the laws should be applied in a manner that provides the greatest protection or sets the highest standard.

As with the prior versions, the amended HELP rules will remain in effect for 30 days or for the duration of the declared state of disaster emergency, whichever is longer, up to a maximum of 120 days after the adoption of the rules.

For a copy of the amended HELP rules, click on the link provided below.

https://www.colorado.gov/pacific/sites/default/files/7%20CCR%201103-10%20Colorado%20Health%20Emergency%20Leave%20with%20Pay%20%28%E2%80%9CColorado%20HELP%E2%80%9D%29%20Rules%20%28Clean%29%204.27.20.pdf

Maryland Amends Definition of Family Member Under Healthy Working Families Act

We previously reported that the 2018 Maryland General Assembly legislative session voted to override Governor Larry Hogan's May 25, 2017 veto of the **Maryland Healthy Working Families Act** (the "Act") by a vote of 88-52 in the House, and 30-17 in the Senate. The Act became effective February 11, 2018. Effective October 1, 2020, the Act was amended by House Bill 880 to expand the definition of "family member."

The Act requires employers with 15 or more employees to provide paid sick and safe leave for certain employees. It also requires that employers who employ 14 or fewer employees provide unpaid sick and safe leave for certain employees.

For more information regarding the Act, access the link provided below.

https://www.dllr.state.md.us/paidleave/paidleavefaqs.shtml

Revised Definition of Family Member

As amended, the definition of "family member" in the Act will include a legal ward of an employee, a legal ward of an employee's spouse, or a legal guardian of an employee's spouse; and generally relating to the Healthy Working Families Act. The Act has been amended as follows:

(g) "Family member" means:

(1) a biological child, an adopted child, a foster child, or a stepchild of the employee;

(2) a child for whom the employee has legal or physical custody or guardianship;

(3) a child for whom the employee stands in loco parentis, regardless of the child's age;

(4) a biological parent, an adoptive parent, a foster parent, or a stepparent of the employee or of the employee's spouse;

(5) the legal guardian **OR WARD** of the employee **OR OF THE EMPLOYEE'S SPOUSE**;

(6) an individual who acted as a parent or stood in loco parentis to the employee or the employee's spouse when the employee or the employee's spouse was a minor;

(7) the spouse of the employee;

(8) a biological grandparent, an adopted grandparent, a foster grandparent, or a stepgrandparent of the employee;

(9) a biological grandchild, an adopted grandchild, a foster grandchild, or a stepgrandchild of the employee; or

(10) a biological sibling, an adopted sibling, a foster sibling, or a stepsibling of the employee.

New Jersey Amends Earned Sick Leave Rules

On May 2, 2018, the Governor of New Jersey signed Assembly Bill 1827 (A1827). This act took effect on October 29, 2018 (180 days after the act was signed into law).

On January 6, 2020, the New Jersey Commissioner of the Department of Labor and Workforce Development adopted Earned Sick Leave Rules N.J.A.C 12:69 finalizing the regulations implementing A1827. The adopted new rules, as summarized below, amended certain provisions within Chapter 69, Earned Sick Leave Rules.

Accrual & Use

Accrual

Hours worked excludes hours the employee is not required to be at his or her place of work because of holidays, vacation, lunch hours, illness and similar reason. Additionally, an hour during which an employee is not at work because of earned sick leave would not be counted as an hour worked toward the 30 hours needed to accrue one hour of earned sick leave.

In the case of a temporary help-service firm placing an employee with client firms, earned sick leave must accrue on the basis of the total time worked on assignment with the temporary help-service firm, and not separately for each client firm to which the employee is assigned.

Note: The taking of earned sick leave by the employee must not result in any diminution in the employee's benefits; in other words, for the purpose of employee benefits, when an employee takes earned sick leave, it will be as if the employee worked those hours.

If any employer of exempt employees, full-time or part-time, prefers not to presume a 40-hour workweek for the purpose of calculating earned sick leave accrual, that employer has the option of recording the actual hours worked and permitting exempt employees to accrue earned sick leave for only the hours recorded.

Rate of Pay Requirements

- **Bonuses** - Where the amount of a bonus is wholly within the discretion of the employer, the employer is not required to include the bonus when determining the employee's rate of pay for earned sick leave purposes. However, nondiscretionary bonuses must be included in the rate-of-pay calculation for earned sick leave.
- **Commissioned Employees** - Where an employee is paid by commission, whether base wage plus commission or commission only, the employer must pay the employee during earned sick leave an hourly rate that is the base wage or the State minimum wage rate, whichever is greater.
- **Gratuities, Food or Lodging** - When the employee's pay includes the value of gratuities, food, or lodging, to calculate the employee's rate of pay for earned sick leave, the employer must add together the employee's total earnings, exclusive of overtime premium pay, for the seven most recent workdays when the employee did not take leave and divide that sum by the number of hours the employee spent performing the work during workdays.

  Where the employee's pay includes the value of gratuities, food, or lodging and it is not feasible to determine the employee's exact hourly wage for earned sick leave purposes using the method described above, the employer will be deemed to have fulfilled the requirement of the payment of earned sick leave if the rate of pay for earned sick leave is based on the agreed hourly wage, but in no event may the earned sick leave be paid at a rate less than the State minimum wage rate.
- **Overtime** - Where an employee uses earned sick leave during hours that would have been overtime, if worked, the employer is not required to pay the overtime rate of pay.
- **Piecework Employees** - When an employee is paid on a piecework basis, whether base wage plus piecework or piecework only, to calculate the employee's rate of pay for earned sick leave, the employer must add together the employee's total earnings for the seven most recent workdays when the employee did not take leave and divide that sum by the number of hours the employee spent performing the work during workdays. When doing this calculation, the employer must consider workdays to mean the days or parts of the days the employee worked.
- **Two or More Different Jobs / Fluctuating Rate of Pay** - Where an employee has two or more different jobs for the same employer or if an employee's rate of pay fluctuates for the same job, the rate of pay for earned sick leave will be the amount that the employee is regularly paid for each hour of work as determined by adding together the employee's total earnings, exclusive of overtime premium pay, for the seven most recent workdays when the employee did not take leave and dividing that sum by the total hours of work during that seven-day period.

California's Los Angeles County Requires Supplemental Paid Sick Leave

The Los Angeles County Board of Supervisors (the "Board") on April 28, 2020, voted unanimously to enact an interim urgency ordinance requiring employers with 500 or more employees nationally to provide supplemental paid sick leave (SPSL) to covered employees immediately until December 31, 2020.

Covered Employers

As noted above, the ordinance applies to private employers with 500 or more employees in the United States, specifically those employees not covered by the federal Families First Coronavirus Response Act (FFCRA) which provides sick leave to employers of fewer than 500. The ordinance is silent concerning when and how an employer calculates its size.

Covered Employees

The ordinance covers individuals employed by an employer on April 28, 2020, who perform any work in the unincorporated areas of the county. The Los Angeles County law contains a presumption of employment that employers must rebut concerning independent contractors with which they do business. Importantly, the ordinance does not apply to a food-sector worker covered by California Governor's Executive Order N-51-20.

Additionally, an employer may exclude employees who are emergency responders or health-care providers as defined below:

Emergency Responder

An employee who provides emergency response services. This category includes, but is not limited to: 1) peace officers; 2) firefighters; 3) paramedics; 4) emergency medical technicians; 5) public safety dispatchers or safety telecommunicators; 6) emergency response communication employees; 7) rescue service personnel; and 8) employees included in the definition of emergency responder in the regulations issued by the U.S. Department of Labor (presumably this means the DOL regulations implementing the federal FFCRA).

Health Care Provider

The category of health care providers includes, but is not limited to: 1) medical professionals; 2) employees who are needed to keep hospitals and similar health-care facilities well supplied and operational; 3) employees who are involved in research, development and production of equipment, drugs, vaccines and other items needed to combat the COVID-19 public health emergency; and 4) employees included in the definition of health-care provider in the regulations issued by the U.S. Department of Labor.

Amount of Leave

Although the Board adopted the ordinance on April 28, 2020, the ordinance says an employer's obligation to begin providing Supplemental Paid Sick Leave (SPSL) begins on March 31, 2020. However, the ordinance's offset provision says that employers that provided additional paid leave for COVID-19-related purposes, above and beyond an employee's regular or previously accrued leaves (e.g., sick or personal leaves), can reduce their SPSL obligation by each hour so provided on or after March 31, 2020, for any of the reasons the law requires.

Under the ordinance, employees who work at least 40 hours per week or are classified as full-time, receive 80 hours, which employers calculate using an employee's highest average two-week pay over the period of January 1 through April 28, 2020. Employees who work fewer than 40 hours per week and are not classified as full-time receive an amount no greater than their average two-week pay over the period of January 1 through April 28, 2020. If two or more employers jointly employ an employee, the employee receives an amount of leave specified for employees of one employer.

The ordinance provides that SPSL is in addition to any paid sick leave an employee receives under California's existing statewide (non-COVID-19) paid sick leave law, the Healthy Workplace Healthy Family Act of 2014. Additionally, the ordinance provides that employers cannot require employees to use other paid or unpaid leave, paid time off, or vacation time an employer provides them before using, or in lieu of using, SPSL.

Covered Uses & Using Leave

Under the ordinance, employees can use SPSL if they cannot work or telework because:

- A public health official or health-care provider requires or recommends the employee isolate or self-quarantine to prevent the spread of COVID-19;

- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19. Notably, the county appears to broadly interpret this provision as it provides the example of an employee who is at least 65 years old or has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or weakened immune system;
- The employee needs to care for a family member (i.e., an employee's child, parent, or spouse) who is subject to a federal, state, or local quarantine or isolation order related to COVID-19 or has been advised by a health-care provider to self-quarantine related to COVID-19; or
- The employee takes time off work because the employee needs to provide care for a family member whose senior-care provider or whose school or child-care provider ceases operations in response to a public health or other public official's recommendation.

Employers must provide SPSL upon an employee's request in writing, which includes, but is not limited to, an email or text message. Where the county ordinance differs from other local emergency paid leave laws is that it explicitly allows employers to require a doctor's note or other documentation to support an employee's need to use SPSL.

Rate of Pay

The ordinance does not contain a standalone pay rate calculation provision. Rather, it appears to require that employers pay SPSL at an employee's "average" rate of pay, based on the potential relief available to an employee for an employer's violation of the ordinance. However, the law does not tell employers how to determine the average.

Prohibitions & Remedies

Employers cannot discharge, reduce in compensation, or otherwise discriminate against any employee for: 1) opposing any practice the law proscribes; 2) requesting to use or actually using SPSL; 3) participating in proceedings related to the law; 4) seeking to enforce rights under the law by any lawful means; and/or 5) otherwise asserting rights under the law.

Additionally, employees cannot waive their rights under the ordinance. An employee's sole recourse for a violation is to file a civil lawsuit in state court, where, if the employee prevails, a court can order reinstatement, award back pay and SPSL unlawfully withheld, order other appropriate legal or equitable relief, and award reasonable attorneys' fees and costs.

For a copy of the ordinance, click on the link provided below.

http://file.lacounty.gov/SDSInter/bos/supdocs/145450.pdf

Chicago, Illinois, Amends Paid Sick Leave Definitions

On December 2, 2019, the Mayor of the City of Chicago, Illinois, signed Substitute Ordinance SO2019-8537. This ordinance amended the definitions of Covered Employers and Covered Employees for Paid Sick Leave.

These amendments will take effect on July 1, 2020.

Covered Employers

Effective July 1, 2020, the Chicago Paid Sick Leave Ordinance will apply to employers with at least one "Covered employee," regardless of whether the employer has a Chicago worksite or is subject to business license requirements. The current regulations define "employer" to mean any individual, partnership, association, corporation, limited liability company, business trust, or any person or group of persons that gainfully employs at least one Covered Employee. To qualify as an Employer, such individual, group, or entity must (1) maintain a business facility within the geographic boundaries of the City and/or (2) be subject to one or more of the license requirements in Title 4 of this Code.

Covered Employees

Covered Employees are employees who work at least 80 hours within a 120-day period, and, within any particular two-week period, perform at least two hours of work for an employer while they are physically present within the geographic boundaries of the city of Chicago.

Effective July 1, 2020, the ordinance will explicitly exclude from coverage the following individuals:

- An outside salesperson (regularly engaged in making sales or obtaining orders or contracts for services where most of such duties are performed away from the employer's place of business);

- A member of a religious corporation or organization;
- A student at, and employed by, an accredited Illinois college or university;
- Motor carriers regulated by the U.S. Secretary of Transportation or the State of Illinois; and
- Certain camp counselors employed at a day camp.

For a copy of the amendment, see page 32 on the link provided below:

https://www.chicago.gov/content/dam/city/depts/bacp/OSL/ordinanceso20198537.pdf

New York City Streamlines Process to Apply For New York State Emergency Paid Sick Leave

We previously reported that on March 18, 2020, New York Governor Andrew Cuomo signed into law legislation (S08091) that provides paid leave benefits and job protection (commonly known as Emergency Paid Sick Leave (EPSL)) to "each employee who is subject to a mandatory or precautionary order of quarantine or isolation (the "Order") issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19." This would include New York City.

On May 11, 2020, in order to make it easier for employees to receive paid sick leave under the New York State EPSL, the New York City Commissioner for Health and Mental Hygiene issued an Order requiring mandatory isolation for those who have tested positive for COVID-19 or have symptoms of COVID-19 and were in contact with someone who tested positive for or had symptoms of COVID-19. Such individuals can use a streamlined process set forth in the Order to claim paid sick leave from their employer.

Subsequently, frequently asked questions (FAQs) found at **https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-paid-sick-leave-order-faq.pdf** were released by the New York City Health Department to provide guidance on the Order.

The FAQs explain the Order applies to employees applying for paid sick leave from their employer under the NY EPSL who live or work in New York City, and currently meet or previously met the qualifications for mandatory isolation related to COVID-19. The qualifications for mandatory isolation include those who either (1) tested positive for COVID-19, or (2) have symptoms of COVID-19 **and** were in contact with someone who tested positive for COVID-19 or who had symptoms of COVID-19.

The FAQs identify several different scenarios that qualify as having contact with a known COVID-19 case, including:

1. Sharing the same household with a person who has tested positive for COVID-19 or presumed to have COVID-19;
2. Having direct physical contact with a person who has tested positive for COVID-19 or presumed to have COVID-19;
3. Having direct contact with infectious secretions (for example, being coughed on or touching a used paper tissue with a bare hand) of a person who has tested positive for COVID-19 or is presumed to have COVID-19;
4. Having contact, either by being within six feet for about 10 minutes or being in the same enclosed space for a sustained period, with a person who has tested positive for COVID-19 or is presumed to have COVID-19;
5. Travel from a country the Centers for Disease Control and Prevention (CDC) has recognized as a "hotspot" for COVID-19 and has issued a level 2, 3 or 4 travel advisory, or traveling on a cruise ship.

Notably, the FAQs make clear that the Order does **not** apply to those employees who are not sick but have a "friend/neighbor/colleague or someone in [their] household" that tested positive for COVID-19. If an employee lives with or has otherwise been in close contact (i.e. within six feet of that individual for a sustained period of time, such as 10 minutes) with a person who tested positive for COVID-19 or is experiencing or has recently experienced COVID-19 symptoms, and that employee is therefore required to quarantine, the FAQs direct the employee to call the NYC Health Department to request an individual quarantine order. Such an individual may still be eligible for NY EPSL, but cannot use this Order to claim paid sick leave from their employer.

Streamlined Process to Obtain Sick Leave Pay

Attached to the Commissioner's Order are three separate appendices (Appendix A, B and C); Appendix A applies to health-care workers; Appendix B applies to essential employees that are not health- care workers; and Appendix C applies to nonessential workers.

To claim emergency sick leave, the employee must fill out the applicable Appendix, gather the information described in the Appendix, and submit the completed Appendix and accompanying documentation to their respective employer. Additionally, the employee must affirm that the statements made in the Appendix are true and accurate to the best of the employee's knowledge.

While employees filling out Appendices A and B must submit documentation showing that isolation is or was necessary, those filling out Appendix C must submit such documentation only if it is available.

For a copy of the Order containing Appendices A, B and C, click on the link provided below.

https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-paid-sick-leave-order.pdf

Oakland, California, Approves Emergency Paid Sick Leave Ordinance

On May 12, 2020, the Oakland, California, City Council unanimously passed the Emergency Paid Sick Leave for Oakland Employees ordinance (the "Ordinance"), **effective immediately** upon adoption, to provide additional paid sick leave to employees who need time off for COVID-19-related reasons. The Oakland ordinance coverage includes large employers with 500 or more employees who are excluded from the emergency paid sick leave requirements under the federal Families First Coronavirus Response Act (FFCRA), but also imposes some additional requirements on employers already covered by the FFCRA.

The Ordinance will expire on December 31, 2020, unless the City Council extends it.

Some of the highlights of the Ordinance are as follows:

Covered Employers/Employees

This Ordinance applies to any business who has an employee who performed at least two hours of work within the geographic city boundaries (including the Port of Oakland) after February 3, 2020.

Notably, coverage is **not** limited to employers with 500 or more employees; however, employers already covered under the FFCRA (499 or fewer employees) may credit the total sick leave hours provided under the FFCRA against their emergency paid sick leave hours obligation under the ordinance.

Small employers who employed fewer than 50 employees between February 3, 2020, through March 4, 2020, are exempt from the ordinance, except for unregistered janitorial employers or franchisees associated with a franchisor or network of franchises where that franchisor or network employs more than 500 employees in total.

Sick Leave Requirement

Employers must pay emergency sick leave based on whether an employee is full-time or part-time, which is determined by the number of hours an employee worked within the city of Oakland between February 3, 2020, and March 4, 2020, and at any point thereafter.

- **Full-time employees** (those who worked at least 40 hours per week during the above time period or their employer classifies as full-time) are immediately entitled to 80 hours of Oakland emergency paid sick leave.
- **Part-time employees** (those who worked fewer than 40 hours per week) are immediately entitled to Oakland emergency paid sick leave equal to the number of hours the employee worked within the City of Oakland over 14 days during the above period. Those fourteen days must be the fourteen days with the highest number of hours worked within the City of Oakland between February 3, 2020, and March 4, 2020.

The above methods also apply for determining the hours of emergency paid sick leave for employees that began working after March 4, 2020.

Qualifying Reasons for Use

An employee may use their Oakland emergency paid sick leave for any of the same qualifying reasons permitted under the FFCRA — if the employee is unable to work or telework for any of the following reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health-care provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. The employee is caring for an individual who is subject to an order described in (1), or self-quarantine as described in (2) above;
5. The employee is caring for a son or daughter whose school or place of care is closed, or the child-care provider is unavailable due to COVID-19 precautions; or
6. The employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

However, under Oakland's ordinance, employees must also be allowed to use their emergency paid sick leave if they are unable to work or telework for any of the additional purposes:

7. To enable the employee to care for a family member who has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19; or
8. To take time off from work because the employee:
    a. Is at least 65 years old;
    b. Has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease or a weakened immune system;
    c. Has any condition identified by an Alameda County, California or federal public health official as putting the public at heightened risk of serious illness or death if exposed to COVID-19; or
    d. Has any condition certified by a health-care professional as putting the employee at a heightened risk of serious illness or death if exposed to COVID-19.

An employer may not require a doctor's note or other documentation for using Oakland emergency paid sick leave, unless to certify a health condition referenced in 8d above. But the employee doesn't need to disclose their condition, only that they are at a heightened risk for serious illness or death if exposed to COVID-19.

Employees can use the leave for any purpose in one-hour increments and intermittently, as necessary. Employers cannot require an employee to use leave in more than one-hour increments.

Where the need for leave is foreseeable, an employee should provide notice to the employer as soon as practical.

Like with federal emergency paid sick leave, an employee may choose to use Oakland emergency paid sick leave before any other leave required to be provided to the employee under Oakland's Paid Sick Leave Ordinance (Oakland Municipal Code section 5.92.030). Employers cannot require an employee to use any other leave before using their sick leave under the Ordinance.

Pay

The amount of pay in Oakland's ordinance goes above and beyond federal requirements.

Under the FFCRA, employers must pay either 100 percent or two-thirds of the employee's regular rate of pay, depending on the qualifying reason for leave. In the FFCRA, for qualifying reasons 1 through 3, where an employee is taking leave due to their own circumstances/condition, they can receive 100 percent of their regular rate of pay, subject to a $511 daily cap and $5,110 total cap. For qualifying reasons 4 and 5 (qualifying reason #6 is currently a "catch-all"), where an employee is caring for someone else, they only receive tw-thirds their regular rate of pay, up to a $200 daily cap and $2,000 total cap.

Not making this distinction, Oakland requires all covered employers — even those already covered by the FFCRA — to **pay their employees at 100 percent of the employee's normal hourly wages for any qualifying reason**, subject to a $511 daily cap and $5,110 total cap.

The Oakland emergency paid sick leave must be paid no later than the payday for the next regular payroll period after the leave is taken, and never more than 14 days after leave is taken.

Health Benefits

Employers can't reduce or eliminate contributions to an employee's health benefits while an employee is using emergency paid sick leave.

Payout of Accrued, Unused Oakland Paid Sick Leave Upon Layoff

Oakland's emergency sick leave ordinance has a unique requirement that if an employer lays off an employee, the employer must pay out previously accrued, unused paid sick leave provided under the Oakland Paid Sick Leave Ordinance (but not emergency paid sick leave) to laid off employees.

Exemptions

In addition to excluding small employers with fewer than 50 employees between February 3, 2020, through March 4, 2020, (except for unregistered janitorial employees and certain franchisees), the Ordinance provides these additional exemptions:

- Employers who are health-care providers or emergency responders, as defined under federal law (29 CFR sec. 826.30(c) under the FFCRA), may choose exemption from the Ordinance requirements. Employers electing this exemption must retain information describing the employee classifications exempted, from which location, and which provisions, for three years from the date the exemption was elected.

- Employers who, after February 3, 2020, provide their employees with at least 160 hours of paid personal leave (excluding paid holidays), so long as: (a) each employee has immediate access to at least 80 hours of leave after May 12, 2020, available to be used for the Ordinance's qualifying reasons; and (b) for any employee whose accrued paid personal leave balance is below 80 hours on May 12, 2020, brings that employee's balance up to 80 hours, available to be used for the Ordinance's qualifying reasons.
- Employers who, after February 3, 2020, provide their employees with immediate access to at least 80 hours of paid personal leave (or the equivalent for part-time employees), available to be used for the Ordinance's qualifying reasons. For this exemption to apply, the paid personal leave must be in addition to any paid leave the employer was otherwise required to provide prior to February 3, 2020.
- Provisions of the Ordinance may be waived by a valid collective bargaining agreement, so long as the terms are clear and unambiguous.

Posting Requirement

Oakland must prepare and publish on its website a notice for employers to post in a way that it will reach all employees, including but not limited to:

- Posting in a conspicuous place in the workplace;
- Via electronic communication; or
- Posting in a conspicuous place in an employer's web-based or app-based platform.

Employers must post and/or provide the notice to their employees within three days after the city publishes it. The notice will be translated into Spanish, Mandarin, Cantonese and Vietnamese (at a minimum), and employers must provide the notice in all languages spoken by more than ten percent of employees.

For a copy of the Oakland ordinance, click on the link provided below.

https://cao-94612.s3.amazonaws.com/documents/EPSL-FINAL-corrected-amended-5-12-20-Council-corrected.pdf

St. Paul, Minnesota, Clarifies Use of Paid Sick Leave During COVID-19

The City of St. Paul, Minnesota, has released frequently asked questions (FAQs) regarding its paid sick leave laws during the coronavirus (COVID-19) outbreak.

Under the Earned Sick and Safe Time (ESST) ordinance, employers with a least 24 employees must provide eligible workers an hour of earned sick leave for every 30 hours worked, up to 48 hours in the first year and 80 hours in a two-year period.

The FAQs clarify that paid sick leave may be used if a worker's place of employment or child's school or daycare is closed due to COVID-19. Paid sick leave may also be used for preventive medical care for the worker or the worker's family member. This would include an absence related to a greater risk of severe complications due to a pre-existing health condition. Workers are only required to a provide a doctor's note to an employer for a COVID-19-related absence if the request is reasonable.

For a copy of the FAQs, click on the link provided below.

https://www.stpaul.gov/sites/default/files/Media%20Root/Human%20Rights%20%26%20Equal%20Economic%20Opportunity/Earned%20Sick%20and%20Safe%20Time%20FAQ%20COVID%20PDF.pdf

Payroll

Wage Deduction Guidance During Pandemic Issued by More Jurisdictions

As a result of the COVID-19 pandemic and the ensuing financial difficulties experienced by many employees, a number of states have issued guidance regarding wage garnishments and state tax levies.

Alaska

Alaska has enacted legislation (Senate Bill 241) effective April 4, 2020, and until the earlier of the end of the COVID-19 public health emergency or November 15, 2020, that provides that the state as a lender or administrator may not "find the borrower in default, ask a court or an arbitrator to find the borrower in default, or seize or otherwise obtain collateral (wage garnishment) that is in the possession or control of the borrower" if the borrower experiences financial hardship related to the COVID-19 public health emergency. In addition to other types of loans, this applies to state student loans issued by the Alaska Commission on Postsecondary Education (ACPE).

For a copy of Senate Bill 241, click on the link below.

http://www.akleg.gov/basis/Bill/Text/31?Hsid=SB0241Z

The ACPE announced it is providing a disaster forbearance option to borrowers impacted by the pandemic. This forbearance is available to most borrowers and can pause payment obligations for three months and prevent default for past-due borrowers.

The ACPE announcement may be found at the link provided below.

https://acpesecure.alaska.gov/Announcements

California

Executive Order N-57-20 (the "Order") released on April 23, 2020, mandates that stimulus payments and any other federal, state, or local government financial assistance provided in response to the pandemic are exempt from attachment, levy, execution, or garnishment.

In addition, government agency setoffs against such payments are explicitly prohibited except in the cases of child, spousal or family support orders, or any criminal restitution payable to victims.

The Order also requires that any funds previously collected in violation of the Order must be returned.

For a copy of the Order, please click on the link provided below.

https://www.gov.ca.gov/wp-content/uploads/2020/04/4.23.20-EO-N-57-20.pdf

Indiana

On April 20, 2020, the Indiana Supreme Court ruled that local courts cannot issue new orders that allow collectors to access payments made to debtors under the federal Coronavirus Aid, Relief, and Economic Security Act (stimulus payments), with an exception made for child support payments.

In addition, the Court order provided that consumers, upon request, have a right to a hearing within two days regarding any garnishments previously in place.

For a copy of the Court Order, please click at the link provided below.

https://www.in.gov/judiciary/files/order-other-2020-20S-CB-123e.pdf

It is important to note the Court order was in addition to a previous order issued on April 3, 2020, directing that Indiana's "courts shall issue no new writs of attachment … until the end of the public health emergency" and temporarily stay service of those issued before April 3rd.

Please click on the link below for a copy of the April 3rd order.

https://www.in.gov/judiciary/files/order-other-2020-20S-CB-123c.pdf

Iowa

On April 24, 2020, the governor of Iowa issued an updated disaster emergency proclamation prohibiting all new garnishments and temporarily suspending existing garnishments except in cases involving domestic support orders such as child and spousal support orders.

A link to the proclamation may be found at the link below.

https://governor.iowa.gov/press-release/gov-reynolds-signs-new-proclamation-continuing-the-state-public-health-emergency

Massachusetts

The attorney general of Massachusetts has released frequently asked questions (FAQs) which provides guidance on the recently issued emergency regulations prohibiting new wage garnishments during the COVID-19 public health emergency.

The effective date of the emergency regulations was March 26, 2020. It is important to note that wage attachments that were obtained and served prior to March 26, 2020, are not prohibited and employers should continue to withhold wages as directed in the garnishment order. The prohibition only applies to wage attachments that were obtained and served on or after March 26, 2020.

For a copy of the FAQs, please click on the link provided below.

https://www.mass.gov/doc/faq-emergency-debt-collection/download

Jackson County, Missouri

An administrative order found at **https://www.16thcircuit.org/Data/Sites/1/media/public-legal-notices/administrative-order-2020-072--writs-4-16-20.pdf** was issued by the Circuit Court of Jackson County, Missouri delaying the issuance of any new writs of garnishments until the end of the business day on May 18, 2020.

Oregon

On April 17, 2020, the governor of Oregon issued an executive order stating the stimulus payments received under the Coronavirus Aid, Relief, and Economic Security (CARES) Act were protected from creditor garnishments. However, as provided in the CARES Act, past due child support payments may still be deducted before the stimulus money is deposited in bank accounts.

The executive order may be found at **https://www.oregon.gov/gov/Documents/executive_orders/eo_20-18.pdf**

Pennsylvania

The Pennsylvania State Department of Revenue (DOR) has suspended issuing new wage garnishments for tax debts. In addition, if an employee is under an existing payment, he or she can request a suspension of payments without cancelling the agreement. The DOR will not default any payment plans during this limited timeframe, even if new delinquencies or nonfiled periods arise. However, interest will continue to accrue on any unpaid balance.

For more information please see **https://www.revenue.pa.gov/Pages/Relief-For-Taxpayers.aspx#PausePayments**

Harris County, Texas

The Harris County Civil Courts at Law have ordered a suspension found at **http://www.ccl.hctx.net/civil/Harris%20County%20Civil%20Courts%20at%20Law%20First%20Emergency%20Order.03202020.pdf** of all new writs of garnishment until the COVID-19 public health emergency has ended.

Virginia

The Supreme Court of Virginia has ordered that all state courts must delay the issuance of garnishments during the period the emergency order is in effect. The emergency order is currently in effect through May 17, 2020. It is important to note that the order only applies to the issuance of new garnishments and not to garnishments that were already in effect.

A copy of the Court order may be found at the link below.

http://www.vacourts.gov/news/items/covid/2020_0422_scv_order_extending_declaration_of_judicial_emergency.pdf

Alabama Provides Teleworking Guidance

On May 12, 2020, the Alabama Department of Revenue (ADOR) has updated its ADOR Operation Updates Due to COVID-19 found at **https://revenue.alabama.gov/coronavirus-covid-19-updates/** to provide guidance regarding employees who are teleworking (working remotely) during the coronavirus (COVID-19) public health emergency.

The ADOR states that, generally, all income is taxable for Alabama residents, regardless of whether or not the work is performed in the state or out-of-state. However, ADOR clarifies that withholding requirements for businesses will not change based on an employee who is temporarily teleworking within Alabama due to COVID-19. ADOR will not consider temporary changes in an employee's physical work location during periods in which temporary telework requirements are in place due to the pandemic to impose nexus or alter apportionment of income for any business.

The ADOR guidance stated as follows:

> Alabama residents are taxable on all of their income, regardless of whether they work either within or outside the state. During the federally declared period of emergency due to the coronavirus (COVID-19) pandemic, Alabama will not change withholding requirements for businesses based on an employee's temporary telework location within Alabama that is necessitated by the pandemic and related federal or state measures to control its spread. Alabama will not consider temporary changes in an employee's physical work location during periods in which temporary telework requirements are in place due to the pandemic to impose nexus or alter apportionment of income for any business.

Georgia Provides Nexus Withholding Tax Information for Teleworking Employees

On May 1, 2020, the Georgia Department of Revenue (DOR) added nexus determination and withholding tax information to their Coronavirus Tax Relief frequently asked questions (FAQs).

The newly added FAQ states as follows:

> **If my employees are working from home due to the Corona Virus pandemic, does that modify my company's nexus determination or the amount of my employee's Georgia wages and therefore my company's Georgia income tax withholding obligation?**
>
> In response to the remote work requirements associated with the Corona Virus pandemic, the Department will not use someone's relocation, that is the direct result of temporary remote work requirements arising from and during the Corona Virus pandemic, as the basis for establishing Georgia nexus or for exceeding the protections provided by P.L. 86-272 for the employer of the temporarily relocated employee. Also, if the employee is temporarily working in Georgia, wages earned during this time period would not be considered Georgia income and therefore the company is not required to withhold Georgia income tax.
>
> The temporary protections provided under this guidance will extend for periods of time where:
>
> 1. There is an official work-from-home order issued by an applicable federal, state or local government unit, or
> 2. Pursuant to the order of a physician in relation to the COVID-19 outbreak or due to an actual diagnosis of COVID-19, the employee is working at home. Additionally, the subsequent 14 days are included in the time period to allow for a return to normal work locations.
>
> Also:
>
> 1. If the person remains in Georgia after the temporary remote work requirement has ended, the normal rules for determining nexus, the employee's wages, and the employer's income tax withholding obligation will apply.
> 2. A company may not assert that solely having a temporarily relocated employee in Georgia, under the circumstances described above, creates nexus for the company or exceeds the protections of P.L. 86-272 for the company.
> 3. Wages paid to a nonresident employee that normally works in Georgia but that is temporarily working in another state, under the circumstances described above, would be considered Georgia wages and the employer should continue to withhold Georgia income taxes.

For a copy of the DOR FAQs, click on the link provided below.

https://dor.georgia.gov/coronavirus-tax-relief-faqs

Maine Extends Tax Relief for Nonresident COVID-19 Disaster Workers

The Maine Department of Revenue Services has provided guidance in the form of a frequently asked question (FAQ) extending the amount of time that a nonresident of Maine working in Maine as a disaster worker will be exempt from Maine income tax during the disaster period.

Under this exemption, the taxpayer must be a nonresident whose presence in Maine during the tax year is for the sole purpose of performing services or conducting business during a disaster period and whose compensation or income is directly related to a declared state disaster or emergency at the request of either (1) Maine; (2) a political subdivision of Maine; or (3) a registered business.

Currently, the disaster period runs for 60 days beginning with the date of the Governor Mills' proclamation of a state of emergency on March 15, 2020. The disaster period has now been extended until 30 days after the termination of the state of emergency.

The updated FAQ states as follows:

> **04. I am a nonresident providing disaster relief in Maine during the COVID-19 pandemic. Will I be subject to Maine income tax?**
>
> Maine law provides that certain compensation for personal services performed in Maine as an employee and certain income from a trade or business conducted in Maine are exempt from Maine income tax during a disaster period. Specifically, the taxpayer must be a nonresident whose presence in Maine during the tax year is for the sole purpose of performing services or conducting business during a disaster period and whose compensation or income is directly related to a declared state disaster or emergency at the request of either (1) the state; (2) a county, city, town, or political subdivision of the State; or (3) a registered business.
>
> This exemption from Maine income tax is available during the COVID-19 disaster period. Generally, the disaster period runs for 60 days beginning with the date of the Governor's proclamation of a state of emergency on March 15, 2020.
>
> However, on May 12, 2020, Governor Mills issued Executive Order 53 FY19/20, temporarily extending a "disaster period," as defined in 36 M.R.S. Section 5102(6-C), to now extend until 30 days after the termination of the state of emergency.
>
> Updated May 14, 2020

For a copy of all of the Maine COVID-19 FAQs, click on the link provided below.

https://www.maine.gov/revenue/faq/covid19_faq.html

Maryland Provides Withholding Guidance For Employees Temporarily Teleworking

On May 4, 2020, the Maryland Comptroller Office (the "Office") updated its guidance on employer withholding requirements for teleworking employees due to the coronavirus (COVID-19) health emergency.

Generally, it was stated that the Office does not intend to change or alter the facts and circumstances it has consistently used to determine nexus or income sourcing. However, the Office will recognize the temporary nature of a business' interim workplace model and employee deployment in light of and during the current health emergency and will not use these temporary measures to impose business nexus; to alter the sourcing of business income; or to impose additional withholding requirements on the employer.

Previously, the Comptroller's Office stated it would consider the temporary nature of a business' interim workplace model and employee deployment in light of the current health emergency in making a nexus determination; whether the business correctly sourced income; and whether the business properly withheld and reported employee state withholding.

For a copy of the Maryland Comptroller Office guidance, click on the link provided below.

https://www.marylandtaxes.gov/covid/documents/TaxAlert050420-EmployerWithholdingonTeleworkers.pdf

Garnishments Suspended in Michigan on Delinquent Student Loans Due to COVID-19

On April 28, 2020, the Michigan Department of Treasury (DOT) announced that collection activities on delinquent Federal Family Education Loan (FFEL) Program student loans made by a financial institution and serviced by the Michigan Guaranty Agency will be halted until Sept. 30, 2020. The DOT has stopped all wage garnishments and offsets to pay outstanding FFEL student loans serviced by the Michigan Guaranty Agency.

For a copy of the announcement, click on the link provided below.

https://www.michigan.gov/som/0,4669,7-192-47796-527231--,00.html

Nebraska Addresses Temporary Teleworking Taxation

On May 19, 2020, the Nebraska Department of Revenue (DOR) has updated its web page on frequently asked questions (FAQs) about income tax changes due to the coronavirus (COVID-19) pandemic. Specifically, DOR alerts employers/payors of withholding tax that they do not need to change employee work locations although employees may be telecommuting or have been temporarily relocated to a work location either in Nebraska or in another state due to COVID-19. The change in work location is not required for the emergency period currently March 13, 2020, through January 1, 2021.

The FAQ found at **https://revenue.nebraska.gov/businesses/frequently-asked-questions-about-income-tax-changes-due-covid-19-national-emergency** states as follows:

> **Do employers/payors need to change income tax withholding for employees who were working on-site in one state before the COVID-19 pandemic, but who are now temporarily working from an alternate site in another state?**
>
> No. DOR will not require employers to change the state which was previously established in their payroll systems for income tax withholding purposes for employees who are now telecommuting or temporarily relocated to a work location within or outside Nebraska due to the COVID-19 pandemic. A change in work location is not required beginning with the date the emergency was declared, March 13, 2020, and ending on January 1, 2021, unless the emergency is extended.

State of New York Amends Wage Theft Prevention Act

In the December 2010 Tech Flex it was reported that Governor David Patterson signed the New York State Wage Theft Prevention Act (WTPA) into law. The new statute provided further protection to employees and misclassified workers from minimum wage, off-the-clock and overtime violations, by requiring more stringent pay notice requirements (also known as "new hire notices") and increasing penalties for wage payment, notice and record-keeping violations. The effective date was April 9, 2011.

Amendments to WTPA

On April 3, 2020, New York Governor Andrew Cuomo signed the 2020-2021 state budget bills, which includes several amendments to New York's Wage Theft Prevention Act (WTPA). The WTPA requires employers to, among other things, provide to employees "new hire" notices and pay stubs containing specific and enumerated information.

Changes to "New Hire" Notice Required Under New York Labor Law Section 195(1)

The WTPA currently requires employers to provide to employees, at the time of hiring, a notice containing the following information:

> The rate or rates of pay and basis thereof (including the employee's overtime rate of pay, if applicable), whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with section one hundred ninety-one of this article; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

The new hire notice must be provided to the employees in English and their primary language, must be signed and dated by the employee, and must be maintained by the employer for six years.

The amendments to the WTPA will require home health-care employers to specify on a home-care worker's new hire form the benefits the employee is receiving under New York's Wage Parity Law, including "each type of … benefit provided."

This requirement goes into effect on October 1, 2020.

The new hire notice requirements under the WTPA will also be amended to address employers covered by New York's prevailing wage law. Specifically, employers covered by the prevailing wage law will be required to specify on an employee's new hire form the "prevailing wage supplements, if any, claimed as part of any prevailing wage or similar requirement pursuant to Article Eight of this Chapter." If the employer claims prevailing wage supplements, the employee's new hire notice must identify the following information:

> (i) the hourly rate claimed; (ii) the type of supplement, including when applicable, but not to pension or health care; (iii) the names and addresses of the person or entity providing such supplement; and (iv) the agreement, if any, requiring or providing for such supplement, together with information on how copies of such agreements or summaries thereof may be obtained.

The amendments requiring this additional information for covered employers takes effect on June 23, 2020.

Changes to "Pay Stub" Requirements Under New York Labor Law Section 195(3)

The state budget bills also amended the WTPA's requirements regarding pay stubs. Specifically, home health-care employers will be required to include on a home-care worker's pay stub:

- The benefits portion of the minimum rate of the home-care aide's total compensation.
- The type of supplement or benefit provided with a corresponding hourly rate for each supplement or benefit.

Note: the benefits portion of the minimum rate of home-care aid total compensation means the portion of home health-care aid total compensation that may be paid in cash or health, education or pension benefits, wage differentials, supplements in lieu of benefits and compensated time off, as determined by the department in consultation with the department of labor.

If prevailing wage supplements are claimed, or home-care aid benefits are provided, prevailing wage employers are required to provide on each statement:

- The type of supplement claimed, or the type of each home-care aide benefit provided with the corresponding hourly rate for each, or
- Be accompanied by a copy of the applicable "new hire" notice as amended.

Note: the "prevailing rate of total compensation" means the average hourly amount of total compensation paid to all home-care aides covered by whatever collectively bargained agreement covers the greatest number of home-care aides in a city with a population of a million or more.

The change becomes effective on October 1, 2020.

Changes to "Recordkeeping" Requirements Under New York Labor Law Section 195(4)

The WTPA has been amended to impose additional recordkeeping obligations on employers. Section four of the WTPA currently requires employers to maintain, for a time period of not less than six years, "true, and accurate payroll records showing for each week worked the hours worked; the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages for each employee."

The WTPA, as amended, will require home-care employers to also maintain records of "the benefit portion of the minimum rate of home-care aide total compensation," as defined by the New York Wage Parity Law, for at least a six-year period. This requirement is scheduled to go into effect on October 1, 2020.

Finally, the WTPA, as amended, will require all employers to also maintain records of the "amount of sick leave provided to each employee," for at least a six-year period. This requirement is scheduled to go into effect on September 30, 2020. Thus, employers will be required to track employees' sick pay usage and maintain such records for no less than six years.

Minimum Wage Increase Delayed in San Carlos, California

We previously reported that the San Carlos, California, City Council adopted Minimum Wage Ordinance 1559, which stipulated that the City's minimum wage rate would increase to $15.00 per hour effective July 1, 2020.

On May 11, 2020, the San Carlos City Council adopted Ordinance No. 1561 to delay the implementation of the July 1, 2020 local minimum wage. Effective January 1, 2021, the minimum wage will increase to $15.00 plus the Consumer Price Index (CPI) will increase to 3.5 percent.

Effective January 1, 2022, the minimum wage will be increased annually based on the CPI up to a maximum increase of 3.5 percent.

Until January 1, 2021, San Carlos will follow the California state minimum wage which is $13.00 for employers with 26 or more employees and $12.00 for employers with 25 or less employees.

For more information on the San Carlos minimum wage, please click on the link provided below.

https://www.cityofsancarlos.org/home/showdocument?id=5677

Guidance on Philadelphia Wage Tax on Nonresident Employees Revised

We previously reported that on March 26, the City of Philadelphia Department of Revenue issued guidance regarding Wage Tax policy for nonresident employees.

On May 4, 2020, the previous guidance was updated to clarify that an employer may choose (but is not required) to continue withholding the Philadelphia wage tax from 100 percent of a nonresident employee's compensation even if the employer requires the nonresident employee to perform duties outside the city. Nonresident employees who had wage tax withheld during the time they were required to perform their duties from home in 2020 may file for a refund after the end of the 2020 tax year by submitting a wage tax refund petition and providing a copy of their W-2 Form.

For a copy of the updated guidance, click on the link provided below.

https://www.phila.gov/documents/coronavirus-tax-guidance/

Time & Labor

Effective Date of Expanded New Jersey Employer Mass Layoff Notice Requirements Delayed Due to COVID-19

We previously reported that on January 21, 2020, New Jersey Governor Phil Murphy signed into law Senate Bill 3170 (SB 3170) amending the Millville-Dallas Airmotive Plant Job Loss Notification Act (aka New Jersey WARN Act), which is analogous to the federal Worker Adjustment and Retraining Notification Act.

Prior to enactment of SB 3170, the New Jersey WARN Act generally required New Jersey private employers with 100 or more full-time workers (including employees outside the state) to provide 60 days' advance notice in the event of a "mass layoff" or a "transfer" or "termination" of operations at a covered "establishment" within the state, and mandated the payment of severance only if the employer failed to provide affected employees with the required amount of advance notice before such termination or layoff.

SB 3170 lengthens the notice period (from 60 days to 90 days) and expands the definitions of "mass layoff" and "establishment." The bill also requires covered employers to pay severance to both full- and part-time employees impacted by such events even if the employer timely verification complies with all applicable notice requirements.

Originally the effective date of SB 3170 was July 20, 2020.

Effective Date Delayed

The enactment of Senate Bill 2353 (SB 2353) delayed the effective date of SB 3170 from being effective July 20, 2020, until 90 days after the Governor's March 9, 2020 COVID-19 executive order expires. Currently no announcement has been provided ending the executive order.

It is also important to note that SB 2353 amended the definition of "mass layoff" to read as follows: (the underlined language is added)

> "Mass layoff" means a reduction in force which is not the result of a transfer or termination of operations and which results in the termination of employment at an establishment during any 30-day period for 50 or more of the employees at or reporting to the establishment, except that "mass layoff" shall not include a mass layoff made necessary because of a fire, flood, natural disaster, national emergency, act of war, civil disorder or industrial sabotage, decertification from participation in the Medicare and Medicaid programs as provided under Titles XVIII and XIX of the federal "Social Security Act," Pub.L. 74-271 (42 U.S.C. s.1395 et seq.) or license revocation pursuant to P.L.1971, c.136 (C.26:2H-1 et al.).

For a copy of SB 2353, click on the link provided below.

https://www.njleg.state.nj.us/2020/Bills/AL20/22_.HTM

See below for more detailed information on the provisions of SB 3170.

All Employees Receive Severance

The prior version of the New Jersey WARN Act covered employers were only required to make severance payments if they failed to provide the required amount of notice of termination or layoff. SB 3170 requires that an employer conducting a "mass layoff" or a "transfer" or "termination" of operations must pay each affected employee one week of severance for each full year of his/her employment, even if the employer provides the full 90 days' notice. An employer that fails to provide such notice to any affected employee must pay that employee an additional four weeks of pay. An employee's right to receive cannot be waived without approval of the waiver by a court or the commissioner of Labor and Workforce Development. If affected employees are entitled to severance under a collective bargaining agreement "or for any other reason," the employer is required pay either the statutorily mandated severance or the severance provided for such "other reason," whichever is greater.

It is important to note that, under the amendment, mandated severance amendment is "regarded as compensation due to an employee . . . earned in full upon the termination of the employment relationship," suggesting it is possible that such severance must be included with the employee's final payment of wages. It remains unclear whether the employer can delay providing such payment pending an employee's decision of whether to accept a greater offer of severance conditioned on a release of claims. Hopefully, New Jersey will provide us with clarification on these issues shortly.

Extended Notice Period

Previously the law required covered employers to provide 60 days' written notice to affected employees (and any collective bargaining units or other employee representatives) and certain state and local government officials of a mass layoff, transfer of operations, or termination of operations. SB 3170 increases the required period of advance notice to 90 days for covered employers.

Reduced "Mass Layoff" Minimum Threshold

Under the old rules, "mass layoff" was defined as the termination of employment within any 30-day period (or 90-day period within which two or more group terminations can potentially be aggregated) of either (1) 500 or more full-time employees at an establishment, or (2) 50 or more full-time employees comprising at least 33 percent of the full-time employees at an establishment. The new law removes the 500-employee and 33 percent requirements and counts both employees "at" an establishment and employees "reporting to" an establishment. Accordingly, 50 or more qualifying terminations will trigger notice and severance requirements regardless of what percentage of the workforce that may constitute.

Both Full-Time and Part-Time Employees Are Now Counted

Before the amendment, the separation of "part-time" employees (working fewer than 20 hours per week on average or employed for fewer than six of the preceding 12 months) was not counted when calculating whether a New Jersey WARN event had occurred. The amendment removes the distinction between "full-time" and "part-time" employees. Now, all employees (regardless of their hours or the length of their employment) count toward New Jersey WARN trigger thresholds; and if New Jersey WARN is triggered, all employees must receive notice and severance. Furthermore, New Jersey WARN, as amended, now covers all employers with 100 or more employees (including employees outside the state), regardless of how many are "full time" or "part time"; previously only those employers with 100 full-time employees were covered.

Separations at All Facilities Across the State Are Aggregated

Previously, New Jersey WARN Act analysis was site-specific, conducted separately for each different "establishment," which was defined as either a single location operated for longer than three years or a group of contiguous such locations, such as a group of buildings forming an office park. The new law removes "contiguous" from this definition, meaning that all of an employer's facilities

within New Jersey are considered one aggregated "establishment"; only temporary construction sites and operations in effect for three years or less are excluded. For example, an employer with 50 facilities throughout the state that separates one employee at each of those facilities (all within a 30-day period) will have conducted a "mass layoff" triggering advance notice and severance requirements—regardless of where in the state those facilities are located.

Individuals May Be Held Liable for Payment of Severance

SB 3170 amends the definition of "employer" to include "any individual" who "act[s] directly or indirectly in the interest of an employer in relation to an employee"; "any person who, directly or indirectly, owns and operates" either the employing entity or a corporate subsidiary owning and operating the employing entity; and "any person who . . . makes the decision responsible for the employment action that gives rise to a mass layoff subject to notification."

Because the revised New Jersey WARN Act compels "employers" to provide severance when the act is triggered, individual employees (such as owners, operators, managers, and decisionmakers) may now be exposed to personal liability for triggering the New Jersey WARN Act and/or failing to provide requisite advance notice.

For a copy of SB 3170, click on the link provided below.

https://www.njleg.state.nj.us/2018/Bills/S3500/3170_R3.HTM

New Jersey Provides Employee Protections From Termination

On March 20, 2020, Senate Bill 2301 was signed into law. This bill prohibits an employer, during the declared Public Health Emergency and State of Emergency, from terminating or refusing to reinstate an employee if the employee requests or takes time off from work based on a written or electronically transmitted recommendation from a medical professional licensed in New Jersey; that the employee take time off work for a specified period of time because the employee has, or is likely to have, an infectious disease which may infect others at the employee's workplace.

If the employer is found to be in violation of Senate Bill 2301, the commissioner or the court is required to order the reinstatement the employee and fine the employer $2,500 for each violation.

The bill was effective as of the date of enactment, March 20, 2020.

For a copy of Senate Bill 2301, click on the link provided below.

https://www.njleg.state.nj.us/2020/Bills/S2500/2301_I1.PDF

State of New York Requires Employers to Provide Unemployment Information to Employees

The New York state Department of Labor has sent the following communication to employers to remind them of their obligation to provide certain information to their employees regarding unemployment insurance.

> Dear Employer:
>
> During this COVID-19 Pandemic, many workplaces have been directly impacted by closures or workforce reduction. As an employer you are required by law (12 NYCRR § 472.8) to provide certain information to your employees to help them promptly complete the unemployment insurance benefits application.
>
> **Immediate action required:** In order to ensure that you are complying with your legal obligations, and to facilitate the timely processing of unemployment insurance benefits applications, we are directing all New York State employers to provide the following information to each of your employees whose work schedule and/or employment status has been impacted as a result of COVID-19 related issues.
>
> **Employer Information**
>
> NYS Employer Registration No:
> Federal Employer Identification No:
> Employer Name:
> Employer Address:

Please make sure that all relevant employees, including those who have already been impacted by COVID-19, are promptly provided this information. You may use Form IA 12.3 to provide this information to your employees.

Thank you for your assistance during this unprecedented time.

Sincerely,

New York State Department of Labor

For a copy of Form IA 12.3, click on the link provided below.

https://www.labor.ny.gov/formsdocs/ui/IA12_3.pdf

Worker Retention and Right-of-Recall Ordinances Enacted in Los Angeles, California

The City of Los Angeles has enacted a worker-retention ordinance and a right-of-recall ordinance, both effective June 14, 2020, that require fair employment practices in response to job and economic insecurity due to coronavirus (COVID-19) shelter-in-place orders. These ordinances apply to the following categories of business: (1) airport, (2) commercial property, (3) event center and (4) hotel.

Under the worker-retention ordinance, when an employer experiences a change in control, covered employees are given preference in hiring by the successor employer for a six-month period. The employee must be retained for at least 90 days, unless there is cause for termination.

The right-of-recall ordinance gives priority to workers laid-off on or after March 4, 2020, by requiring an employer to make an offer to such a worker in writing to the last known mailing address, email or text message regarding any position that becomes available after June 14, 2020. The laid-off worker has five business days to accept or decline the offer.

Links to the ordinances may be found below:

Worker Retention

http://clkrep.lacity.org/onlinedocs/2020/20-0147-S15_ORD_186603_06-14-2020.pdf

Right of Recall

http://clkrep.lacity.org/onlinedocs/2020/20-0147-S15_ORD_186602_06-14-2020.pdf

ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP *Eye on Washington* Web page located at **www.adp.com/regulatorynews**.

If you have any questions regarding our services, please call 855-466-0790.

ADP, LLC.
One ADP Boulevard, Roseland, NJ 07068
adp.com

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