



Responding to COVID-19: What Employers Need to Know

Presented By:

Carlton C. Pilger, National Director of Employee Benefit Compliance Services, EPIC

D. Albert Brannen, Managing Partner

Fisher & Phillips LLP

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Introductions and Overview



Carl Pilger, Esq.
National Director, Employee Benefits Compliance Services
EPIC Insurance Brokers & Consultants

Carl leads the Compliance Practice for EPIC's national Employer Services Platform. Carl has more than 25 years' experience as an ERISA attorney consulting and advising clients on ERISA and ACA compliance. Carl is a subject matter expert in the ACA, having traveled the country speaking to numerous industry groups regarding the law's complexities.



D. Albert ("Bert") Brannen
Managing Partner, Fisher & Phillips LLP

Bert represents employers exclusively in solving their labor and employment law problems and counsels them on how to comply with applicable laws, avoid or deal with workplace crises and prevent litigation. He regularly advises employers about increasing employee engagement and, when necessary, assists them with the negotiation, administration and arbitration of collective bargaining agreements.

Editor's Note

Please note that this deck was prepared for a March 25 release and contains certain detail that has been modified, interpreted, and updated by the CARES Act and agency/departmental guidance issued since that time. For the most updated information on the subsequent guidance, please see our updated articles at: epicbrokers.com/insights/topics/coronavirus/

Agenda

- **Navigating employment issues during COVID-19 pandemic**
- **Understanding employee benefit implications of COVID-19 response**
- **New employer obligations under Families First Coronavirus Response Act (FFCRA)**
- **Q&A**
- **Additional resources**

Navigating Employment Issues During COVID-19 Pandemic

- Addressing issues between now and April 1, 2020
- Addressing issues between April 1, 2020 and April 11, 2020
- Addressing issues after April 11, 2020

Understanding Employee Benefit Implications of COVID-19 Response

- Group health coverage
- Other coverages

Meeting New Employer Obligations Under First Coronavirus Response Act (FFCRA)

- Health Care Provisions
- Emergency Paid Sick Leave Act
- Emergency FMLA Expansion Act
- Emergency Unemployment Insurance Stabilization and Access Act of 2020
- Agency Guidance

Key Health Care Provisions

- Requires insured and self-insured group health plans to provide coverage for COVID-19 diagnostic testing without cost sharing (including deductibles, copayments and coinsurance)
- Requires insured and self-insured group health plans to cover provider and facility costs associated with COVID-19 diagnostic testing visits

EMERGENCY FAMILY & MEDICAL LEAVE

Emergency Family & Medical Leave Act

- Which employers are covered?
- Significantly expands FMLA on a temporary basis
- Any employee who worked for employer for 30 days prior to leave and has a qualifying reason is eligible (no requirement of 12 months/1,250 hours)
- Provides up to 12 weeks of job-protected leave (paid after the first 10 days)

Emergency Family & Medical Leave Act

Qualifying Reasons

12 weeks of job protected leave when:

“The employee is unable to work (or telework) due to the need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to an emergency with respect to COVID-19 declared by a Federal, State or local authority.”

Emergency Family & Medical Leave Act

How Does it Work

First 10 days of EFMLA may be unpaid

- An employee may elect to substitute accrued PTO, vacation, or sick leave to cover any portion of first 10 days
- Employer cannot require an employee to substitute such leave

After the first 10 days

- Compensated at 2/3 of the regular rate
- Part-time employees/irregular schedule entitled to be paid based on average number of hours employee worked in prior 6 months, or if employed less than 6 months, average number of hours employee would normally be scheduled to work
- **Pay capped at \$200 per day and \$10,000 in aggregate per employee**

Emergency Family & Medical Leave Act

Job Restoration/Reinstatement

- If 25 or more employees, traditional restoration obligation
- If fewer than 25 employees, the traditional job reinstatement provisions of the FMLA do not apply IF the following conditions are met (note this does not excuse provision of E-FMLA):
 - The employee takes E-FMLA
 - The position the employee held when the leave started does not exist due to economic conditions or other changes in operating conditions of the employer (i) that affect employment; and (ii) are caused by a public health emergency during the period of leave
 - The employer makes reasonable efforts to restore the employee to an equivalent position, with equivalent pay, benefits, and other terms
 - If reasonable efforts to restore to an equivalent position fail, the employer makes reasonable efforts to contact the employee if an equivalent position becomes available during the 1 year period beginning on the earlier of (A) the date on which the qualifying need related to a public health emergency concludes; or (B) the date that is 12 weeks after the date on which the employee's leave for E-FMLA commences.

Emergency Family & Medical Leave Act

Notice Requirements

Employers:

No new specific notice requirement. However, under the FMLA, all covered employers must display a general notice (FMLA poster) about the FMLA.

Employees:

Where the necessity for leave is foreseeable, an employee shall provide the employer with notice of leave “as is practicable.”

Law effective April 1, 2020 through December 31, 2020 (for now)

EMERGENCY PAID SICK LEAVE

Emergency Paid Sick Leave

- **Which employers are covered?**
- **How much paid sick leave can employees get?**
 - Full-time – 80 hours of paid sick leave
 - Part-time – A number of hours based on the average number of hours the employee works during typical two-week period.

Emergency Paid Sick Leave

Qualifying Reasons

If employee cannot work or telework due to a need for leave because:

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 seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order or self-quarantine as described above.
5. The employee is caring for a son or daughter if school or child care is closed/unavailable.
6. The employee is experiencing “any other substantially similar condition” specified by HHS (catch all).

Emergency Paid Sick Leave

- **At employee's regular rate for qualifying reasons (1), (2) or (3)**
 - Compensated at HIGHER of their regular rate, federal minimum wage or local minimum wage
- **At 2/3 the employee's regular rate for qualifying reasons (4), (5) or (6)**
- **Capped at the following levels:**
 - \$511 per day and \$5,110 in the aggregate per person for qualifying reasons (1), (2) and (3).
 - \$200 per day and \$2,000 in the aggregate per person for qualifying reasons (4), (5) and (6).

Emergency Paid Sick Leave *Notice Requirements*

- **Employers:** Employers must post a notice regarding the requirements of the law.
 - The Secretary of Labor is required to make a model notice publicly available by no later than March 25.
- **Employees:** After the first workday (or portion thereof) an employee receives paid sick leave, the employer may “require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.”
- Law will remain in effect until December 31, 2020 (for now)

QUESTIONS?

Additional Resources

- <https://epicbrokers.com/coronavirus/>
- <https://www.fisherphillips.com/faqs>
- <https://www.irs.gov/coronavirus>
- <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- https://www.eeoc.gov/facts/pandemic_flu.html
- <https://www.cdc.gov/coronavirus/2019-nCoV/index.html>

THANK YOU