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The Ever-Changing Legal Landscape

Presented by Jonathan Beckerman



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Jonathan A. Beckerman is a partner in the Fort Lauderdale office of Lewis Brisbois and a member of the Labor & Employment Practice.

A go-to resource in complex employment matters, Jonathan A. Beckerman leverages his legal experience and deep subject matter knowledge to achieve successful results on behalf of management-side clients. His proactive counsel helps employers identify and mitigate workforce risks, particularly for companies in the hospitality, retail, construction, manufacturing and health/wellness sectors. Jonathan is a tenacious federal and state court litigator known for his thorough understanding of intricate employment issues, including:

- Wrongful termination
- Discrimination
- Workplace harassment
- Public accommodation
- Employee leave
- Whistleblowing

New Wage & Hour Law Issues

Timekeeping Issues Arising Out of the Compressed Shift to Telework

- Minimum wage
- Overtime
- Outside sales exemption
- Business expense reimbursement
- Teleworking agreements

Reimbursement For Necessary Work Expenses

- Common Expenses
 - Phone
 - Internet
- New Potential Expenses
 - Personal Protective Equipment (“PPE”)
 - More home office equipment and supplies
 - Increased energy costs

New Time Spent Subject to Employer's Control

- Temperature checks
- Putting on or cleaning PPE
- Time spent cleaning or disinfecting surfaces

New Paid Leave Issues

Families First Coronavirus Response Act ("FFCRA")

- Effective through December 31, 2020
- Applicable to employers with fewer than 500 employees
 - Over 500 for some city and counties
 - Exemptions for healthcare and emergency care response workers

General Entitlement For All Employees

- Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

Additional Entitlement for Employees Employed for at least 30 Days

Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19

Qualifying Reasons for Leave

- (1) Subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- (2) Have been advised by a health care provider to self-quarantine related to COVID-19;
- (3) Experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- (4) Caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- (5) Caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
- (6) Experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Duration of Leave

- For reasons (1)-(4) and (6): A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.
- For reason (5): A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Calculation of Pay

- For leave reasons (1), (2), or (3): employees taking leave shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).
- For leave reasons (4) or (6): employees taking leave shall be paid at $\frac{2}{3}$ their regular rate or $\frac{2}{3}$ the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).
- For leave reason (5): employees taking leave shall be paid at $\frac{2}{3}$ their regular rate or $\frac{2}{3}$ the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

Other Information Regarding Notice Requirements, Anti-retaliation Provision, Tax Credits & Penalties

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

New Workplace Safety Issues

OSHA

- Industry specific requirements
 - Examples: grocery stores, construction
 - Standards: temperature checks, cleaning, appropriate distancing
- Discretion in Enforcement When Considering Good Faith Efforts
- Liability waivers (customers vs. employees)

Other Civil Lawsuits

- Negligence
 - New class actions alleging “inadequate” COVID-19 response
 - Example: McDonalds
 - Potential Liability Shields being discussed
- Injunctive Relief

New Layoff & Furlough Issues

Federal Worker Adjustment and Retraining Notification (“WARN”) Act

- 100 or more employees
- 60 days’ notice

New Disability Accommodation Issues

Sources

- Title VII
- ADA
- Expected New Requests:
 - Requests to Continue Working From Home Past Lifting of Shelter in Place Orders
 - Requests for Modification of Job Duties

New Discrimination & Harassment Issues

Sources

- Title VII
- State Equivalents

New Discrimination Complaints Arising Out of Layoffs & Furloughs

- Claims that people are being singled out based on:
 - Protected Characteristic; or
 - Engaging in Protected Activity

Increased Risk of Blurred Lines Given New Reliance on Remote Communication Mediums

- Zoom
- Email and Slack
- Calls and Texts
- Viral Memes

Closing Thoughts

- “An ounce of prevention is worth a pound of cure”
 - Benjamin Franklin
- Re opening into the “new normal” will be a work in progress for everyone, including employers
- This said, with a few limited exceptions, employers will be expected to comply with existing federal, state and local legal obligations
- Consult experienced legal counsel early and often!

Thank You!



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