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Subject: UPDATED COVID-19 EMPLOYEE LEAVE INFORMATION
To:

Hi Folks,

As promised, I wanted to let you know of the latest information coming from Congress. The House has amended the bill passed just the other day on extended FMLA and sick leave; I've attached the latest summary. Please keep in mind it is expected that whatever legislation ultimately passes will apply to employers that are typically not currently covered by FMLA, meaning it will apply to those with less than 50 employees and to employees that have only worked for an employer for a short time. As soon as I have the final legislation I will update you again. Just remember to keep this legislation in mind as you navigate employee leave issues. Additionally, I've had some questions about FERPA. In general, there is quite a bit of leeway under FERPA to share student information in the state of emergency or for a health emergency. Share what information you need to share; document who you shared it with; what you shared, and why. That documentation will need to go into the student file.

I will continue to keep you posted and be available during this unprecedented time. Take care!

Warmly,

Lisa

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ATTACHMENT:

This revised bill now provides as follows:

Emergency Family and Medical Leave Act

The revised bill provides that private-sector employers with fewer than 500 employees, and covered public-sector employers, must provide up to 12 weeks of job-protected FMLA leave for “a qualifying need related to a public health emergency” to employees who have been on the payroll for 30 calendar days. This “qualifying need” is limited to circumstances where an employee is unable to work (or telework) due to a need to care for a minor child if the child’s school or place of child care has been closed or is unavailable due to a public health emergency. This is a dramatic scaling back from the prior iteration of the bill, which would have provided extended FMLA for a far broader range of COVID-19-related reasons.

As with the prior bill, the first segment days of emergency FMLA leave (which has been reduced from 14 days to 10 days in the revised bill) can be unpaid. An employee can opt to substitute accrued vacation, personal, or sick leave, but an employer may not require an employee to do so.

The remainder of FMLA leave is required to be paid, generally at two-thirds of the employee’s regular rate, for the number of hours the employee would otherwise be scheduled to work. Unlike the prior bill, the revised bill limits the amount of required pay for leave to no more than \$200 per day and \$10,000 in the aggregate.

Emergency FMLA leave taken is generally job-protected, meaning the employer must restore employees to their prior positions (or an equivalent) upon the expiration of their need for leave. As in the prior version, the bill includes an exception to this requirement for employers with fewer than 25 employees, if the employee’s position no longer exists following leave due to operational changes occasioned by a public health emergency (e.g., a dramatic downturn in business caused by the COVID-19 pandemic), subject to certain conditions.

The revised bill retains language allowing the Secretary of Labor to exclude health care providers and emergency responders from the definition of employees who are allowed to take such leave, and to exempt small businesses (defined as those with fewer than 50 employees) if the required leave would jeopardize the viability of their business.

Further, the bill appears to exclude employers with fewer than 50 employees in a 75-mile radius from civil FMLA damages in an employee-initiated lawsuit. Finally, the bill

expressly provides that employers may exclude employees who are health care providers or emergency responders from this emergency FMLA entitlement.

The bill would take effect 15 days after enactment, and sunset on December 31, 2020.

Emergency Paid Sick Leave

The bill requires private employers with fewer than 500 employees, and covered public employers, to provide paid sick time to an employee who is unable to work or telework 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 because of 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 subject or advised to quarantine or isolation; (5) the employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions; or (6) the employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

An employer may exclude employees who are health care providers or emergency responders from this coverage. The bill also grants the Secretary of Labor the authority to issue regulations to: (a) exclude certain health care providers and emergency responders from the definition of employee by, among other things, allowing them to opt out; (b) exempt small businesses with fewer than 50 employees from these requirements if they jeopardize the viability of a business as a going concern; and (c) ensure consistency between the paid family and paid sick standards and tax credits.

In general, an employee is entitled to 80 hours of paid sick time (pro-rated for part-time employees). Unlike the 30-day payroll requirement, employees are immediately eligible for this leave.

The bill limits an employer's requirement of paid leave to \$511 per day (\$5,110 in the aggregate) where leave is taken for reasons (1), (2), and (3) noted above (generally, an employee's own illness or quarantine); and \$200 per day (\$2,000 in the aggregate) where leave is taken for reasons (4), (5), or (6) (care for others or school closures).

The bill includes a prohibition on retaliating against any employee who takes leave in accordance with the new law. The bill further provides that the failure to pay required sick leave will be treated as a failure to pay minimum wages in violation of the Fair Labor Standards Act.

The bill would become effective 15 days after its enactment, and sunset on December 31, 2020.

Tax Credits and Other Efforts

The bill includes refundable tax credits for employers that are required to offer Emergency FMLA or paid sick leave, including self-employed individuals. Note that these credits are only available to those employers that are required to offer these

benefits under the new law, and these new credits are not generally extended to employers not subject to the new mandates under the bill.