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Employment Update: Employer Focused Summary of Recent Federal and State COVID Relief Bills Posted March 22, 2021

The American Rescue Plan passed and signed into law by President Biden on March 11, 2021 extends and resets the FFCRA after its expiration on March 31. The extension and reset goes into effect on April 1 through September 30, 2021.

In addition, Governor Newsom signed a new COVID-19 Supplemental Paid Sick Leave Act (SB-95) into law this past Friday, March 19 which is retroactive to January 1, 2021 and extends through September 30, 2021.

The relevant portions of the two laws are summarized below.

Federal: American Rescue Plan Act (“ARPA”)

- **<500 Employees:** The provisions of the ARPA only apply to employers with less than 500 employees.
- **Additional Leave as of April 1:** Amount of FFCRA leave available is reset to up to 80 hours (10 days) of emergency paid sick leave (“EPSL”) and up to 12 weeks of emergency FMLA leave (“EFMLA”).
 - Leave taken prior to April 1 will not count toward the reset cap
- **Providing Leave Not Required:** Employers are not required to provide paid leave, but if they choose to they will receive payroll tax credits for doing so until September 30, 2021.
- **New Qualifying Reasons for Leave:** ARPA expands the qualifying reasons for taking leave under both the EPSL and EFMLA to include:
 - Seeking or awaiting results of COVID-19 test after an exposure or at an employer’s request;
 - Vaccination appointments;
 - Conditions or complications related to receiving the COVID-19 vaccine.
- **Changes to Paid Leave for EFMLA:** ARPA expands the amount of paid leave available under the EFMLA as follows:
 - Eliminates the requirement that the first 10 days of EFMLA is unpaid;
 - Increases the total tax credit cap for EFMLA from \$10,000 to \$12,000 per employee.
- **Additional Qualifying Reasons and Pay for both EPSL and EFMLA:** Under the ARPA, both EPSL and EFMLA can be taken for the following qualifying reasons (in addition to the new reasons listed above). Note that this is an expansion of the EFMLA leave, which was previously only allowed for childcare purposes.
 - Qualifying Reasons Related to the Employee’s Own Health:
 - Subject to quarantine or isolation order due to COVID-19;
 - Advised to self-quarantine by health care provider due to COVID-19;
 - Experiencing symptoms of COVID-19 and seeking medical diagnosis.
 - Under the EPSL this is paid at the employee’s regular rate of pay, up to \$511/day (capped at \$5,110) total; under the EFMLA it is limited to 2/3 of the employee’s regular rate of pay, up to \$200/day (capped at \$12,000 total)
 - Qualifying Reasons Related to Employee’s Need to Care for others:
 - Caring for a family member who is subject to quarantine, or has been advised to self-quarantine;
 - Caring for a child whose school or child care is closed due to COVID-19.

- Under both EPSL and EFMLA this is paid at 2/3 employee's regular rate of pay, up to \$200 per day.
- **New Non-Discrimination Rule:** The new law prohibits the tax credit for employers that discriminate in giving FFCRA paid leave by favoring highly compensated employees, full-time employees, or employees on the basis of tenure with the employer. If employers do not make FFCRA paid leave available to all employees without respect to their compensation level, job category or seniority, they could be denied the tax credit.

California: SB-95 – COVID-19 Supplemental Sick Leave

- **26+ Employees:** The law requires employers with 26 or more employees to provide supplemental paid sick leave for COVID-19 reasons. The law does not apply to employers with 25 or fewer employees, however these employers *are* covered under the federal ARPA discussed above. Employers with 500+ employees will be covered by SB-95 and not by the federal ARPA.
- **Retroactive to January 1 and through September 30:** The requirement to provide the paid sick leave will take effect on March 29 (10 days after law enacted), at which point it will be retroactive to January 1, and extend until September 30, 2021. This means that if you did not provide paid sick leave for qualifying reasons as of January 1, but instead provided unpaid leave, you will need to provide pay for that leave retroactively by the next full pay period to comply with this law (note that you may qualify for FFCRA tax credits for doing so).
- **Reasons for Leave:** Employers must provide supplemental paid sick leave for employees that are unable to work or telework due to any of the following reasons:
 - Subject to quarantine or isolation order or guidelines due to COVID-19;
 - Advised to self-quarantine by health care provider;
 - Attending vaccine appointment;
 - Experiencing symptoms of COVID-19 and seeking medical diagnosis;
 - Caring for a family member who is subject to quarantine, or has been advised to self-quarantine;
 - Caring for a child whose school or child care is closed or unavailable due to COVID-19.
- **Amount of Leave:** Full-time employees (work at least 40 hours per week on average) are entitled to 80 hours of supplemental paid sick leave. Other employees are entitled to the average amount of hours they normally work over a 14-day period.
- **Amount of Pay:** Employees get their regular pay during leave, up to a maximum of \$511 per day, and \$5,110 total.
- **Separate from Sick Leave on Wage Statement:** The COVID-19 Supplemental Paid Sick Leave is a separate entitlement from other paid sick leave provided by the employer, and must be listed separately on the written notice or wage statement provided to employees.
- **Model Notice Forthcoming:** The Labor Commissioner shall make a model notice available by the end of this week that employers can send to employees.

If you have questions please feel free to reach out to us to discuss. This email is provided for general informational purposes only and should not be construed as legal advice. The various governmental agencies tasked with enforcing these laws will likely publish FAQs addressing some of the uncertainties that may develop as to how these laws will work in practice. We encourage you to check with those agencies frequently for regulatory guidance.