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Employment Update: Napa Order, Employee Work Pass and DOL Regulation Updates
Posted April 6, 2020

COVID-19 Employer Updates – Week of April 6, 2020:

1. Last week Napa County issued its updated Shelter in Place (“SIP”) Order in line with the other Bay Area Counties. A copy of the Order can be found here:

<https://www.countyofnapa.org/DocumentCenter/View/17112/Shelter-at-Home-Order-4-3-2020-?bidId=>

The Order is effective from April 3, 2020 to April 30, 2020. The Order clarifies, strengthens, and extends certain terms of the prior SIP Order to increase social distancing and reduce person-to-person contact in order to further slow transmission of COVID-19. The updated Order clarifies essential businesses and activities and contains new directives:

- Requiring compliance with city and other local rules at parks and other outdoor recreation areas to improve social/physical distancing;
- Closing playgrounds and other shared recreational facilities (such as tennis courts, basketball courts, and swimming pools); and
- Requiring essential businesses to prepare, post, and implement a Social Distancing Protocol, including limiting the number of people allowed in a store at one time and providing guidance on how to control shopping lines.

The required Social Distancing Protocol must be substantially in the form attached as Appendix A to the Order. Appendix A is attached to this email for reference and we recommend using this template. The Social Distancing Protocol must be implemented by **April 6 at 11:59 pm** for all Essential Businesses at each of their facilities at which they are maintaining operations. (See paragraph 13h of the Order).

The Order also provides some clarification regarding what activities are considered essential. For example, construction is allowed including for housing and Essential Businesses but it must comply with the Construction Site Requirements to maintain social distancing and sanitation. Gardening and landscape services are also allowed in order to maintain the safety, habitability, and sanitation of a business or residence, but cannot be used solely for cosmetic purposes.

2. We have put together a template that you can provide to your employees if you are an Essential Business and have employees that still need to come into work, either for a shift or to pick up supplies, in the event they are asked why they are not sheltering in place.
3. The Department of Labor has issued its final regulations regarding the expanded paid Family and Medical Leave (EFMLA) and paid emergency sick leave (EPSL) under the Families First Coronavirus Response Act (FFCRA). The rule is referred to as a “temporary” rule because it expires on December 31, 2020. You can access and download the full final version of the rule on the DOL website, which also has links to a free webinar regarding the regulations as well as slides that you can download and view: <https://www.dol.gov/agencies/whd/ffcra>.

The regulations mainly confirmed the information already contained in the DOL's expanded FAQs that we sent out previously, however, there are some key clarifications to note. If you have specific questions regarding the regulations and how it affects your employees please let us know.

- a. The DOL clarified that the term "Son or Daughter" has the same meaning as is used in the regular FMLA. Accordingly, the term means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability.
- b. Section 826.100 provides greater detail on the documentation that is required for employees who need to take leave under the FFRCA, which is consistent with the guidance already provided from the IRS. In the case of leave that is requested to care for an employee's son or daughter whose school is closed due to COVID-19, the regulations require an employee to provide: "(1) The name of the Son or Daughter being cared for; (2) The name of the School, Place of Care, or Child Care Provider that has closed or become unavailable; and (3) A representation that no other suitable person will be caring for the Son or Daughter during the period for which the Employee takes Paid Sick Leave or Expanded Family and Medical Leave." Employers are required to keep copies of all documentation for four years.

If an employer is already required to provide regular FMLA leave (i.e. employers with more than 50 employees), its employees are only entitled to 12-weeks of FMLA leave total in a 12-month period (as determined by the employer). That means if an employee has already taken FMLA leave in the 12 month period, they can only take EFMLA leave for the remaining time available in the 12-month period and they do not get an additional 12-weeks of EFMLA leave.