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Employment Update: State and Federal COVID-19 Leave Laws Are Set to Expire on September 30, 2021

As of the date of this email, both the federal and the California COVID-19 leave laws are set to expire on September 30, 2021 and it does not appear that either the State or Federal legislatures will be extending these provisions. The California law, SB-95, requires employers with 26 or more employees to provide up to 80 hours of supplemental paid sick leave for COVID-19 reasons from January 1 to September 30, 2021. The American Rescue Plan Act, which was passed by Congress earlier this year, extended the ability of employers to take a tax credit against their payroll taxes for offering leave to employees for COVID-19 reasons through September 30, 2021. Additionally, the optional COVID-19 related leaves under the federal law, Emergency Paid Sick Leave and Emergency FMLA, both expire on September 30.

After September 30, 2021, employers with 26 or more employees will no longer be required to provide the COVID-19 supplemental paid sick leave under California law. Employers of any size may still choose to put their own COVID-19 policies in place that provide pay for employees who miss work for COVID related reasons, however, employers will no longer receive a tax credit for those payments.

California's law required employers to initially give notice to employees regarding the availability of the COVID-19 supplemental paid sick leave and the time period of the leave. However, employers may want to remind employees that the leave is expiring on September 30. Note that if an employee is already taking COVID-19 supplemental paid sick leave at the time the leave expires on September 30, they are permitted to take the full amount of leave that they are entitled to even if it extends past September 30.

Employer Pay Obligations After September 30

Although employers will no longer be required to provide separate supplemental paid sick leave for COVID-19 purposes after September 30, under the Cal/OSHA Emergency Temporary Standards ("ETS") employers must maintain all pay and benefits for employees who are required to be excluded from the workplace due to COVID-19 and otherwise able to work. Employees may choose to use their regular paid sick leave during the exclusion period; however, employers cannot require employees to use their regular paid sick leave.

The exclusion pay is only required for cases of workplace exposure to COVID-19, therefore, if employers are able to show that an employee's exposure to COVID was outside the workplace no exclusion pay is required in that case. Employers also do not have to pay an employee that receives disability payments or worker's compensation during the exclusion period. For more information on the Cal/OSHA ETS exclusion pay you can access the DIR's FAQ page <https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-Exclusion-Pay-ETS.html>.

Additionally, many employers are now requiring vaccinations and/or regular COVID-19 testing as a condition of employment. If employees are required to receive the vaccine as part of their job, employers must pay for the cost of the vaccine, if any, and the time it takes the employee to get vaccinated. Further, the DIR issued an FAQ on COVID-19 testing that states that employers must pay for the cost of COVID-19 testing if it is a requirement of the job. This includes paying for the test itself, the time it takes the employee to get tested (including any travel time), and reimbursing employees for travel expenses if the testing location is not at their regular workplace. You can read the DIR's full FAQ on COVID-19 testing <https://www.dir.ca.gov/dlse/COVID19resources/FAQs-Testing-Vaccine.html>.

Employee Leave Options After September 30

Even though the State and federal COVID-19 leaves are expiring on September 30, many employees will still need to take time off from work for COVID-19 related reasons. Unless their employers have their own COVID-19 policies in place, much of this time off work may be unpaid.

If an employee is sick with COVID-19 symptoms or is caring for a family member who has COVID-19 symptoms, they can use their regular California paid sick leave if they have accrued time available. Employees can also take family and medical leave under CFRA to care for themselves or their family members if their symptoms rise to the level of a serious health condition. Leave under CFRA is unpaid but employees may qualify for disability insurance from the state.

As always, if you have any questions about this or any other employment related matters, please contact us.