Engage PEO Client Alert:

Update: Families First Coronavirus Response Act

For general information on the Families First Coronavirus Response Act (FFCRA) and its main provisions, please see Engage's first alert regarding the Act here.

Please note that the Department of Labor (DOL) Guidance has indicated that the effective date for the law is April 1st, 2020 and will expire on December 31, 2020.

Posting of Required Notices

The Department of Labor has now released the **employment law poster** relating to employee rights and employer obligations under the FFCRA. **The FFCRA requires that all covered employers post the required notice - linked here - in a conspicuous place on its premises. Covered employers include all employers with fewer than 500 employees.** (*Poster link updated 4/13/2020)*

- **There will be some hardship exceptions for small businesses**. The Secretary of Labor has the authority to issue regulations for good cause to exempt small businesses with fewer than 50 employees from the requirements of the EFMLEA when the imposition of such requirements would jeopardize the viability of the business as an ongoing concern. However, it is unclear what those regulations will be at this time.
- If a covered employer has implemented telework policies in light of COVID-19 recommendations, they may satisfy this requirement by emailing or direct mailing this notice to employees or posting this notice on an employee information internal or external website.

The Department of Labor (DOL) has issued additional guidance regarding the poster here.

Additional Guidance Issued by the DOL

The DOL has also recently issued a question and answer guidance to provide further explanation of the new pay requirements set forth under the FFCRA. **For more information, see the DOL's website here**.

- This guidance has clarified that **all employees employed within the United States are to be counted for purposes of FFCRA application and coverage**. This differs from the existing employee count mechanism under the Family Medical Leave Act (FMLA), which requires an employer count all employees within a 75-mile radius of a work location for FMLA coverage to be triggered.
- The DOL has also included more detailed instructions for determining how many hours an employee is entitled to be compensated for under the various paid leave provisions if they are part time employees or work irregular shifts. Similarly, it also describes how to calculate rate of pay when there are irregularities in pay structure, such as commissions, service charges, multiple rates of pay, and overtime, among others.
- Importantly, **the DOL clarified that employees cannot take separate ten day paid sick leaves for separate covered events under the Emergency Paid Sick Leave Act.** Therefore, if a person is ill and must self-quarantine and uses the 10 days, they cannot use an additional ten days to care for a child who need to quarantine.

- The guidance also confirmed that **these benefits are not retroactive**. Since they impose new requirements, it is possible that someone who covered time off related to COVID-19 under a state law or company policy may be eligible to take additional time on or after April 1st.

Small Business Exception to FFCRA

Employers may be wondering if they qualify for the small business exception to the FFCRA. Information previously released regarding the FFCRA indicated that some employers with fewer than 50 employees may be excluded from the paid leave requirements of the FFCRA if providing paid leave under the Act would jeopardize the viability of their business. Existing guidance failed to provide further detail regarding what circumstances would be considered to jeopardize the viability of the business and whether this exception would apply to both the Emergency Family and Medical Leave Expansion Act (FMLEA) and the Emergency Paid Sick Leave Act (EPSLA), or just one of these forms of paid leave.

The new question and answer guidance indicates that **employers who believe they would fall under this exception must document the reasons why their business meets the criteria, and explains that further guidance specifying the criteria and application for this exemption will be forthcoming, expected in April 2020.**

In the meantime, the DOL has clarified that **employers are instructed not to submit any documentation to the Department in order to elect this exemption.**

Paid Leave Tax Credits

As a reminder, **to help bear the cost of the new paid-leave requirements, employers can offset the amounts incurred due to the new paid leave requirements through employment taxes and otherwise seek refunds for additional payments**. However, employers who choose to offer more generous payments than the caps contemplated by law will not be reimbursed for the difference.

We understand that COVID-19 related issues are extremely dynamic. Engage will continue to monitor developments and keep clients updated. Please contact your HR Consultant or Account Manager if you have any questions.