Engage PEO Client Alert:

Department of Labor Announces New Guidance for Telework and FFCRA Leave

This week the Department of Labor (DOL) announced additional guidance relating to tracking the working hours for remote workers, and new questions that have arisen surrounding entitlement to leave under the Families First Coronavirus Response Act (FFCRA) as schools begin the reopening process.

Tracking Hours for Remote Workers

The DOL's updated guidance reminds employers that they are **still required to track the actual working hours for employees that are working remotely from home**, including those hours that are not scheduled. Generally, whether work is performed on site or at home (or a combination of the two) an employer is required to pay its employees for all hours worked, including work not requested but "suffered or permitted" (i.e. off-the-clock work). If the employer knows or has reason to believe that work is being performed, the time must be counted as hours worked.

It is recommended that employers exercise "reasonable diligence" in determining whether or not additional, unscheduled work has been performed, particularly when an employee is working from home. This can be accomplished by establishing a "reasonable reporting procedure" for off-the-clock time and then compensating employees for all hours that get reported, including time that was not requested by the employer. In those cases, if an employee fails to report these hours through the established procedure, the employer is not required to engage in "impractical efforts" (such as auditing employee emails or time spent accessing company-owned electronic devices) to investigate and/or uncover unreported time.

Laws in certain states may have additional guidelines for tracking hours. For more detailed guidance, the **DOL Field Assistance Bulletin No. 2020-5 can be accessed here**.

FFCRA Leave as Schools Reopen

The DOL has also issued additional FAQs that address specific questions regarding the different ways many schools are implementing reopening procedures, and how those options will impact an employee's entitlement to leave under the FFCRA.

While there are a variety of options and plans being implemented in schools across the country, it is important to note that **the DOL has clarified that where a school has decided to reopen for in person classes, but the parent chooses to have the child remain in the home, the parent will not be entitled to leave under the FFCRA.**

This and other information can be accessed on the DOL's FAQ page, found here.

Please call your Engage HR Consultant with any questions or concerns.