



STAGNARO, SABA
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March 20, 2020

VIA ELECTRONIC MAIL

Re: An Update from SSP as to COVID-19

To all SSP Clients:

We hope that you and your family are staying safe and healthy during this difficult time. In light of numerous state and federal actions in response to the COVID-19 outbreak, including the recent passage of federal legislation related to employee paid leave benefits (H.R. 6201), we wanted to provide you a general update as to where matters stand today.

In reviewing this correspondence, please keep in mind that the COVID-19 crisis and state/federal government actions in response continue to occur by the day. As such, any of the descriptions and summaries set forth below are subject to change.

As always, SSP is here to assist you. If you have any questions or concerns regarding the below, please do not hesitate to contact our office.

H.R. 6201 (FMLA Expansion and Paid Sick Leave)

On March 18, 2020, Congress passed and the President signed into law H.R. 6201, **set to take effect on April 2, 2020**. The bill includes the “Emergency Family and Medical Leave Expansion Act” and “Emergency Paid Sick Leave Act” which both generally provide paid, job-protected sick leave to employees affected by the COVID-19 outbreak, including but not limited to caring for children subject to school closures. **Both Acts generally apply to any private employer with at least one but less than 500 employees.**

We have provided key highlights from the respective Acts below:

1. FMLA Expansion (Emergency Family and Medical Leave Expansion Act)

- Amends the Family and Medical Leave Act (FMLA) to include an additional category of leave when the employee is unable to work or telework due to a need to care for their son or daughter under 18 years of age, if the school or place of care has been closed, or the child care provider is unavailable due to a public health emergency (referred to herein as “FMLA COVID-19 Leave”).

- FMLA COVID-19 Leave applies to all private employers with at least one but less than 500 employees, and to all employees who have been employed by the employer for at least 30 calendar days.
- The first ten (10) days for which an employee takes FMLA COVID-19 Leave under the Act may consist of unpaid leave.
- An employee may elect, but is not required, to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first 10 days of unpaid FMLA COVID-19 Leave.
- Following the first ten (10) days of unpaid FMLA COVID-19 Leave, the employer shall provide paid leave in the amount of two-thirds (2/3) of an employee's regular rate of pay. Such amounts are subject to a statutory cap of \$200 per day, and \$10,000 in the aggregate. Employees with fluctuating hours are generally calculated based upon the average number of hours that the employee was scheduled per day over the prior six month period.
- For employers with less than 25 employees, employee job restoration following FMLA COVID-19 Leave is not required only to the extent that:
 - (1) The position held by the employee when leave commenced no longer exists due to economic conditions or other changes in operating conditions based upon the COVID-19 outbreak;
 - (2) The employer makes reasonable efforts to restore the employee to an equivalent position; and
 - (3) For 1 year after leave commences or the public health emergency concludes, whichever is earlier, the employer makes reasonable efforts to contact the employee if an equivalent position later becomes available.
- An employer who is not otherwise subject to the FMLA (i.e., under 50 employees), is generally not subject to certain statutory penalties for violation of the FMLA.
- The Secretary of Labor has the authority to exempt small businesses with fewer than 50 employees from the requirements of the Act, when the imposition of such requirements would jeopardize the viability of the business as a going concern.
- Employers providing paid FMLA COVID-19 Leave will generally be eligible for a tax credit based upon such payments.

2. Paid Sick Leave (Emergency Paid Sick Leave Act)

- All employers with at least one but less than 500 employees are obligated to provide statutory paid sick leave to the extent that the employee is unable to work or telework because of any of the following conditions:

- *Condition 1:* The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
 - *Condition 2:* The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - *Condition 3:* The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - *Condition 4:* The employee is caring for an individual who is subject to a quarantine or isolation order, or has been advised by a health care provider to self-quarantine;
 - *Condition 5:* The employee is caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider is unavailable due to COVID-19 precautions; or
 - *Condition 6:* The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
- Employers are to make Paid Sick Leave immediately available to eligible employees upon the Act's effective date (April 2, 2020).
 - Full-time employees are entitled to 80 hours of paid sick leave; part-time employees are entitled to the number of hours the part-time employee works on average over a 2 week period.
 - Paid sick Leave is generally calculated based upon the employee's regular rate of pay, subject to the following conditions:
 - For Paid Sick Leave based *Conditions 1-3* (set forth above), there is a cap of \$511 per day, and \$5,110 in the aggregate.
 - Employees utilizing their Paid Sick Leave under these circumstances receive their regular rate of pay.
 - For Paid Sick Leave based upon *Conditions 4-6*, there is a cap of \$200 per day, and \$2,000 in the aggregate.
 - Employees utilizing Paid Sick Leave under these circumstances receive two-thirds (2/3) of their regular rate of pay.
 - The Secretary of Labor is to issue guidance to assist employers in calculating Paid Sick Leave.
 - Employers are prohibited from requiring employees to use other paid leave before the employee may use their Paid Sick Leave.

- Employers are prohibited from discharging, disciplining, or otherwise discriminating against an employee who takes leave under the Act, or files a complaint or institutes proceedings under the Act.
- The Secretary of Labor shall have the authority to exempt small businesses with fewer than 50 employees from the requirements of the Act, when the imposition of such requirements would jeopardize the viability of the business as a going concern.
- Employers providing Paid Sick Leave will generally be eligible for a tax credit based upon such payments.
- The Act is set to expire on December 31, 2020.

OHIO AND KENTUCKY STATE ACTIONS

The Governors of Ohio and Kentucky have also taken significant steps to combat the spread of COVID-19, including through state-imposed business and school closures, and limitations on mass gatherings.

We have provided certain state-imposed actions which may be relevant to you or your business below:

Ohio

- **Closure of all K-12 schools** in the State of Ohio until April 3, 2020. *See* March 14, 2020 Ohio Department of Health Director's Order.
- **Closure of all Ohio bars and restaurants to in-house patrons**. Restaurants with take-out and delivery options will still be able to operate those services, even as their dining rooms are temporarily closed. *See* March 15, 2020 Ohio Department of Health Director's Order.
- **Limitation and prohibition of mass gatherings of fifty (50) or more persons** in a single room or single space at the same time, and a recommendation that Ohioans avoid unnecessary non-family social gatherings of more than ten (10) people. *See* March 17, 2020 Ohio Department of Health Director's Order.
- **Closure of recreation-type businesses (gyms, yoga studios, etc.)**, including bowling alleys, health clubs/fitness centers/workout facilities/gyms/yoga studios, indoor trampoline parks, indoor water parks, movie theaters and all performance theatres, public recreation centers, and indoor sports facilities. *See* March 17, 2020 Ohio Department of Health Director's Amended Order to Limit and/or Prohibit Mass Gatherings and the Closure of Venues in the State of Ohio. *See* March 17, 2020 Ohio Department of Health Director's Order.

- Order that **all non-essential or elective surgeries and procedures** which utilize personal protective equipment (PPE) **should not be conducted**. *See* March 17, 2020 Ohio Department of Health Director's Order.
- **Closure of all barbershops, nail salons, tattoo parlors**, and all but 5 Ohio Bureau of Motor Vehicle (BMV) offices. *See* Announcement by Governor DeWine on March 18, 2020.
- **Revisions to Ohio Unemployment Benefits** to workers who are unemployed as a consequence of COVID-19. *See* March 16, 2020 Ohio Executive Order 2020-03D

This Order includes the following:

- The definition of unemployed workers is expanded to include individuals requested by a medical professional, local health authority, or employer to be isolated or quarantined as a consequence of COVID-19 even if not actually diagnosed with COVID-19;
- Individuals totally or partially unemployed, or who are participating in the SharedWork Ohio Program are no longer required to serve a waiting period before receiving unemployment insurance or SharedWork benefits;
- Any benefit paid on such unemployment claims related to COVID-19 shall not be charged to the account of the employer, but instead shall be charged to the mutualized account, except in the case of reimbursing employers;
- Waiver of work search requirements for unemployment now includes those individuals requested by a medical professional, local health authority or employer to be isolated or quarantined as a consequence of COVID-19 even if not actually diagnosed with COVID-19; and
- Penalties for late reporting and payments will be waived for employers affected by COVID-19;
- The above orders related to unemployment benefits apply only to those workers that do not have access to leave benefits from their employer(s).

Kentucky

- **Closure of Kentucky's 172 school districts** for two weeks. *See* Governor Beshear announcement on March 13, 2020.
- Order **restricting food and beverage sales (including alcohol) to carry-out, delivery and drive-thru only** until March 30, 2020; no onsite consumption is permitted. *See* Executive Order dated March 16, 2020.

- **Revisions to Kentucky unemployment benefits**, including waiving the waiting period and job search requirements for unemployment for workers losing jobs due to coronavirus. Kentucky unemployment statutes were also directed to be liberally construed in accordance with USDOL guidance to provide discretion as to ability to work, availability to work, work-search activities, and suitable work in the context of COVID-19. *See* Executive Order 2020-235 dated March 16, 2020 (“State of Emergency Relating to Unemployment Insurance Claims and Benefits”).
- **Closure by March 18, 2020 of all public-facing businesses** that encourage public congregation or that by the nature of their service to the public cannot comply with CDC guidelines concerning social distancing. **This includes closure of all entertainment and recreational facilities, community and recreation centers, gym and exercise facilities, hair salons, spas, concert venues, theaters, and sporting event facilities.** The Executive Order does not include food providers, food processors, agriculture, industrial manufacturing, feed mills, construction, trash collection, retail, groceries, consumer goods, home repair, hardware, auto repair, pharmacies, other medical facilities, biomedical, healthcare, post offices, insurance, banks, gas stations, laundromats, veterinary clinics and pet stores, warehousing, storage, distribution, public transportation, and hotel and commercial lodging. *See* Governor Beshear Executive Order dated March 17, 2020.

Again, if you need any assistance or guidance with respect to these state and federal actions, please do not hesitate to contact our office.

Sincerely,

The Shareholders
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