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COVID-19

Legal Update for Businesses

Presented by

Anthony G. Stergio
Shareholder

Board Certified in Labor & Employment Law

Manuel P. Schoenhuber
Associate

Different Types of Emergency Leave

Leave Provided for:

- Government ordered quarantine;
- Quarantine/Self isolation on order of healthcare provider;
- Treatment or diagnosis of COVID-19;
- Care for quarantined individual or substantially similar care; and
- Care for child due to school closure or unavailable child care.

Specific Leave Issues

- Leave can be used intermittently if employer agrees.
- No leave if employee is furloughed before April 1.
- Leave cuts off if employee is terminated or furloughed after April 1 due to lack of work/closure.
- Different types of leave can interact.

	Emergency Paid Sick Leave (10 days of paid leave total between reasons below)	Emergency FMLA (10 days of unpaid leave, then 10 weeks of paid leave)
Parent caring for his or her child because of a school closure or child care unavailability due to COVID-19	Paid at 2/3 the employee's regular rate. Capped at \$200 per day and \$2,000 in the aggregate.	Likewise paid at 2/3 the employee's regular rate. Capped at \$200 per day and \$10,000 in the aggregate.
Care for quarantined individual or substantially similar care	Paid at 2/3 the employee's regular rate. Capped at \$200 per day and \$2,000 in the aggregate.	Not covered.
Employee quarantined by government order or on advice of health care provider, or out for diagnosis or treatment due to COVID-19	Paid at full regular rate. Capped at \$511 per day and \$5,110 in aggregate.	Not covered.

Only applies if employee is unable to work or telework.

Expansion of Unemployment Benefits

- Available for employees who lose work due to COVID-19 related closures or furloughs.
- Not available due to mandatory salary reductions but an employee can get unemployment if they quit as a result of a salary reduction of more than 20%.
- Now no waiting periods for unemployment.

If You Have a COVID-19 Positive or Presumptive Positive Employee?

- Keep employee away from work until he/she gets healthcare provider release.
- See who employee contacted in three (3) days prior to becoming symptomatic.
- Notify those employees of potential positive (without identifying employee).
 - Pre-consent
 - Post-consent

OSHA

General Duty Clause

- Employers must keep employees safe from known serious hazards.
- Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. 29 U.S.C. § 654, 5(a)1.

OSHA

Recordable/Reportable of COVID-19

- If it can be directly attributable to work.
- There is also a possibility that a confirmed COVID-19 case among you employees could be an OSHA recordable. OSHA has, however, softened its stance on this in the past few days. A confirmed employee COVID infection would only be recordable if it is work related. A case is presumed to be work-related **if and only if** an exposure in the work environment is a **discernable cause of the illness**. This will likely be difficult to establish given the present situation.

Worker's Comp

- Whether COVID-19 is compensable is up to the carrier.
- Case by Case Determination
 - It is if it occurred during the scope of work it is compensable
 - It is not if it is an ordinary life disease
 - Work related COVID-19 increasingly more difficult to establish as virus spreads (outside of healthcare employment).

Legal Checklist

- Determine who is entitled to paid leave.
- Determine who is entitled to unemployment.
- Determine what employees should be kept from workplace.
- Determine what employees should be told of positive or presumptive positive employee.
- What are OSHA responsibilities.
- Are certain COVID-19 issues compensable.

The CARES Act of 2020

- TITLE I. KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT
 - Paycheck Protection Loan Program
 - Provides loans to businesses to pay employees
- TITLE II. ASSISTANCE FOR AMERICAN WORKERS, FAMILIES, AND BUSINESSES
 - RELIEF FOR WORKERS AFFECTED BY CORONAVIRUS ACT
 - Provides financial relief for individuals, families, and businesses
- TITLE IV. ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE UNITED STATES ECONOMY
 - CORONAVIRUS ECONOMIC STABILIZATION ACT
 - Allocates \$500 billion to lenders making loans, loan guarantees, and other investments to U.S. businesses, states, and municipalities

Title I - Paycheck Protection Loan Program

- February 15, 2020 through June 30, 2020
- Expands number of businesses eligible for SBA loans (generally, less than 500 employees)
- Borrower must make good faith certification that (a) the loan is necessary due to uncertain economic conditions caused by COVID-19, (b) the entity will use the funds to (i) retain workers and maintain payroll, (ii) make lease and mortgage payments, and (iii) utility payments, and (c) the entity is not receiving duplicative funds from another SBA program
- Maximum amount of loan = 2.5x company's average total monthly payroll costs (up to \$10 million)

Title I - Paycheck Protection Loan Program

- Use loan for qualified costs related to employee compensation and benefits, including (i) payroll costs, (ii) continuation of health care benefits, (iii) employee compensation (for those making less than \$100,000), (iv) mortgage interest rate obligations, (v) rent, (vi) utilities, and (vii) interest on debt incurred before the covered period
- All or a portion of loan may be forgivable, and debt service payments on loan may be deferred for up to 1 year
- U.S. Small Business Administration and Treasury Department still need time to prepare program for roll-out and to schedule a date for when they will allow banks to begin taking applications
 - SBA Sample Application Form: <https://www.sba.gov/document/sba-form--paycheck-protection-program-ppp-sample-application-form>

Stay-at-Home/Shelter-in-Place Orders

- White House extended “social distancing” guidelines through April 30
- President Donald Trump confirmed nationwide stay-at-home order was discussed
 - That option is “pretty unlikely, I would think, at this time”
- Orders require residents to stay at home unless they are conducting “Essential Activity” or to provide or perform “Essential Governmental Functions,” or to operate “Essential Businesses,” as defined in the orders
- Guidance: Department of Homeland Security CISA definition for “essential services”

“Essential” Critical Infrastructure Workers



Discussion

Presented by

Anthony G. (“Tony”) Stergio

Shareholder

Andrews Myers, P.C.

713.850.4214 astergio@andrewsmyers.com

Manuel P. (“Manny”) Schoenhuber

Associate

Andrews Myers, P.C.

713.351.0339 mschoenhuber@andrewsmyers.com

An aerial photograph of a city skyline, likely Houston, Texas, showing several modern high-rise office buildings and a construction site with cranes. A prominent red curved graphic element sweeps across the bottom of the image, partially obscuring the buildings and the text below.

Andrews Myers, PC

1885 Saint James Place, 15th Floor, Houston, TX 77056

919 Congress Avenue, Suite 1050, Austin, Texas 78701

www.andrewsmyers.com