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Labor Department Posts Additional FAQs on Paid Sick and Family Leave Under the FFCRA

On Saturday, March 28, 2020, the Department of Labor (DOL) posted additional FAQs regarding paid sick and family leave requirements under the Families First Coronavirus Relief Act (FFCRA). There are now 59 interpretative questions and answers employers and employees can peruse in researching rights and responsibilities under the FFCRA. Among the most helpful is question 21, where the DOL explains how intermittent leave under the FFCRA works, including for teleworking employees, and, in questions 58 and 59 provides more color on the “small business exemption.”

As for intermittent paid sick or family leave, the DOL has explained that such leave is available only to those employees who are requiring the time off to take care of a child who is out of school or daycare due to COVID-19, and only if the employer agrees. So in theory, a teleworking employee could take a half-day to take care of a child, and telework the remaining half. By contrast, if the paid leave is related to COVID-19 sickness reasons, e.g., the employee is experiencing symptoms of COVID-19 or taking care of someone who has or is waiting for diagnosis on the virus, then the leave must be taken in a single, continuous block of full days off until the employee uses up the available paid time off or no longer has a COVID-19 qualifying reason under the FFCRA.

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As to the small business exemption, the FFCRA provides that small businesses that have fewer than 50 employees may apply to be exempt from the Act's paid sick and family leave requirements if providing such leave will "jeopardize the viability of the business as a going concern." The DOL's guidance explains that, for the time being, employers should document why they meet the exemption criteria – and then stay tuned for the "forthcoming regulations." As further explained in the DOL's guidance, exemption criteria will apply only to paid family leave, e.g., if the employee is asking for time off due to school or daycare closure caused by COVID-19, and will require the business to show that: (1) the business expenses would exceed its revenues and cause the business to cease operating at minimal capacity; (2) the employees seeking leave have specialized skills or unique responsibilities; or that (3) the remaining employees would not be able to sufficiently cover for the requesting employee's or employees' position(s) during the absence. So, the exemption will be granted in limited circumstances only; otherwise, covered employers will be required to comply with the FFCRA beginning April 1.

If you have any questions regarding paid sick and family leave under the FFCRA or other Labor and Employment issues, please do not hesitate to contact Sonya Rosenberg or your Neal Gerber Eisenberg attorney.

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