Federal Paid Sick Leave Passed By The Senate California Suspends Warn Act

Orange County Reigns In Shelter-In-Place Order

Developments around the COVID-19 pandemic continue to move fast and significant changes in the relevant laws continue to evolve. This Client Alert covers three recent developments, including the passage by the United States Senate of the Families First Coronavirus Response Act, California's temporary suspension of the California WARN Act, and significant softening of the Orange County Public Health shelter-in-place regulations. As always, we encourage you to reach out to any member of team listed at the end of this Alert with any questions you may have on these fast moving topics.

The Families First Coronavirus Response Act

The Senate has now approved and the President has signed the Families First Coronavirus Response Act (FFCRA) after the House of Representatives made substantial revisions to the earlier version of the legislation. The bill provides, among other things, paid sick leave and paid family leave under the Family Medical Leave Act to workers affected by the COVID-19 pandemic.

Major components of the emergency sick leave provisions include:

- The bill provides a total of 80 hours of paid sick leave for full-time employees. Part-time employees are provided an amount of leave equal to an average number of hours worked over a two week period. These paid sick leave hours must be paid at the greater of the employee's regular rate or the Federal, state, or local minimum wage (whichever is greater).
- The bill applies to employers with fewer than 500 employees.
- The bill caps the amount of paid sick leave to an employee depending on the reason the employee is taking the leave.
- Employees are paid at their regular rage for all FFCRA sick leave hours, limited to $511 per day and $5,110 total, if a) using the FFCRA sick leave because the employee is subject to a government quarantine or isolation order related to COVID-19, b) has been advised by a health care provider to self-quarantine related to COVID-19, or c) the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- Employees are paid at two-thirds of their regular rate for all FFCRA sick leave hours, limited to $200 per day and $2,000 total, if using the paid sick leave because d) the employee is caring for an individual subject to a government quarantine or isolation order, e) is caring for an individual advised to self-quarantine by a health care provider, f) is caring for a son or daughter whose school or child care provider has been closed due to COVID-19 precautions, or g) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of the Treasury and Labor.
- The law prohibits employees from requiring employees to use other paid leave provided by the employer before using FFCRA leave.

- Employers are required to post notice of the availability of FFCRA sick leave.

The Family Medical Leave Act (FMLA) has been revised to add a right to take leave related to care for children not attending school or being provided child care due to the COVID-19 pandemic. Specifically, FMLA leave may be taken when the "employee is unable to work (or telework) due to a need for leave to care for a son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency."

- The bill applies to employers with fewer than 500 employees and to employees who have worked at least 30 calendar days for the employer.
- This leave may be unpaid for the first 10 days. After the first 10 days of leave the employee must be paid at two thirds of their regular rate for an amount of hours they are normally scheduled to work, but no more than $200 per day and $10,000 total, with a maximum leave period of 12 weeks.
- If the employee's schedule varies, the hours they are scheduled to work is determined by the average number of hours per day over the past 6 months, or if that information is not available, the reasonably expected hours per day when that employee was hired.
- The leave is protected FMLA leave, but provides exceptions for employers with fewer than 25 employees. These exceptions include where a public health emergency makes the employee's position unavailable.

For both FFCRA sick leave and FMLA leave, the bill allows employers or the Secretary of Labor to exclude certain health care providers and emergency responders, and permits the Secretary of Labor to exempt businesses with fewer than 50 employees where compliance would jeopardize the viability of the business. The bill takes effect in 15 days and end on December 31, 2020.

California WARN Act 60 Day Notice Suspended

On March 17, the Governor suspended the application of the California WARN Act for mass layoffs and cessation of operations related to the COVID-19 pandemic.[1] The order recognizes that the pandemic has caused many employers to suddenly shut their doors or lay off employees, and left them unable to comply with the requirements of the California WARN Act.

The order is significant because, unlike the federal WARN Act, the California WARN Act has no express provision exempting the 60 day advance notice requirement for layoffs that result from unexpected circumstances such as a pandemic unless they are a "physical calamity" or an act of war. Before the order, many employers were left to speculate whether the COVID-19 pandemic constituted a physical calamity, and this order creates certainty that the California WARN Act 60 day notice requirement will not apply during the pandemic.

In order to comply with the order, employers experiencing a triggering event will still need to provide notice, but will not be required to provide 60 days advanced notice. Please contact us if you are unsure whether your company is covered under either the federal or California WARN Acts.

The Governor's order adopts the exemption from the 60 day notice requirement provided under the federal WARN Act for "unforeseeable business circumstances" such as the COVID-19 pandemic and expressly references the federal statute and regulations. The requirements of the order are:

- The employer must provide as much notice as practicable to affected employees, the EDD, and relevant local authorities. Employers who already experienced a triggering event should provide notice consistent with this order as soon as possible.
- The mass layoff, relocation, or termination must be due to COVID-19-related "business circumstances that were not reasonably

1 https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.20-EO-motor.pdf

foreseeable as of the time that notice would have been required."

- The notice must provide a brief statement about why the notice period must be reduced.
- The notice must inform employees of their rights to obtain unemployment insurance by including the statement: "If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at labor.ca.gov/coronavirus2019 ."

The order is effective for triggering events that occur on or after March 4, 2020, and ends at "the end of this emergency" which appears to be when the Governor declares an end to the state-wide state of emergency. The Governor further ordered the Labor and Workforce Development Agency to provide guidance on the implementation of the order by March 23rd.

Orange County Public Health Order Restricting Public Gatherings

or On March 17, the Orange County Health Officer issued an order that effectively appeared to be a shelter-in place requirement causing many businesses to cease operations and create substantial confusion in numerous other areas. After realizing the effects of the order, that evening the County issued a press release stating that the intent of the order was widely misunderstood, and that business were expected to remain open.

On March 18, the County issued a revised order that rescinded the earlier order and clearly states that *business are not prohibited from operating in the county,* but all business should operate in accordance with social distancing guidelines published by the California Department of Public Health. [2]

The order does prohibit private or public gatherings as defined by the California Department of Public Health until 11:59 p.m. on March 31st.[3]

The order mandates the closing of bars, restaurants, movie theatres, gyms, and health clubs. All food service is to proceed on a pick-up, delivery, or drive-through basis, and establishments serving food are advised to follow the guidance from the California Department of Public Health. [4]

The order specifies that it does not prohibit gatherings of members of a household, family, or living unit, or the utilization of caregivers. Further, the order does not prohibit attendance at school, going to work, or performing other essential services. The order also does not apply to "essential public transportation, airport travel, shopping at a store, mall, or farmers' market, or charitable food pantries and distributions, or to congregate living situations, including dormitories and homeless encampments."

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2 https://www.ochealthinfo.com/civicax/filebank/blobdload.aspx?BlobID=114422

3 "A "gathering" is any event or convening that brings together people in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, cafeteria, or any other indoor or outdoor space." See https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/cdph-guidance-gatherings-covid19-transmission-prevention-03-16-2020.pdf

4 https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Corona-virus%20Disease%202019%20and%20Food%20Beverage%20Other%20Services%20-%20AOL.pdf

We are available to assist

Please do not hesitate to reach out to us for assistance in dealing with the effects of the COVID-19 pandemic on your company.

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