



**K&L GATES**

**April 8, 2020 Webinar for PACA Members**

# Employment Law and COVID-19

## PRESENTERS



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# EMPLOYMENT LAW FRAMEWORK

# RELEVANT LAWS

- Family and Medical Leave Act
- Families First Coronavirus Response Act
- Americans with Disabilities Act
- Title VII
- Fair Labor Standards Act
- Occupational Safety and Health Act
- State workers' compensation laws
- WARN Act

# FAMILY AND MEDICAL LEAVE ACT

- Employers with 50+ employees within 75 miles
- The FMLA entitles **eligible** employees of covered employers to take **unpaid, job-protected leave** for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.
- Qualifying reasons include:
  - Employee's own serious health condition
  - To care for the employee's spouse, child, or parent who has a serious health condition

## FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- Employers with less than 500 employees
- Emergency Paid Sick Leave Act
  - Paid sick leave for specified events
- Emergency Family and Medical Leave Expansion Act (a/k/a public health emergency leave):
  - Expands coverage and eligibility
  - Paid leave for childcare-related reasons
- April 1 – December 31, 2020

## FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- **Emergency paid sick leave**
  - Available to *all* employees
  - **Qualifying reasons:** The employee is
    - (1) quarantined under federal, state, or local order,
    - (2) self-quarantined on advice of healthcare provider,
    - (3) experiencing COVID-19 symptoms and seeking diagnosis,
    - (4) caring for someone subject to quarantine,
    - (5) caring for a child whose school or day care is closed due to COVID-19,
    - (6) experiencing any other substantially similar condition specified by the Health Secretary

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- Emergency paid sick leave
  - **Benefits:**
    - Two weeks of paid leave (up to 80 hours) at full pay\* if:
      - Employee is subject to quarantine (including self-quarantine) or experiencing COVID-19 symptoms and seeking treatment (1)-(3)
    - Two weeks of paid leave (up to 80 hours) at 2/3 of regular rate of pay\* if:
      - Employee is caring for another person subject to quarantine (4),
      - Employee is caring for a child whose school is closed due to COVID-19 (5), or
      - Employee has substantially similar specified condition (6)



## FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- **Expanded family and medical leave**
- **Qualifications:** employed for at least 30 days and unable to work because of childcare needs where school or day care closed because of public health emergency, *e.g.*, COVID-19
- **Benefits:** an additional 10 weeks of paid leave (after 2 weeks of unpaid leave) at 2/3 of the employee's regular rate of pay\*

## FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- Other notes:
  - Must post notice
  - Not applicable if business closed
  - Employees who are furloughed or laid off are not entitled to this leave
  - Intermittent leave for certain circumstances if employee and employer agree

## FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- Small business exemption
  - **Eligibility:** Employers with < 50 employees for which paid sick leave would result in:
    - Expenses exceeding revenue preventing the business from operating at minimal capacity;
    - Substantial risk to financial health or operational capacity; or
    - Insufficient employees to perform the work of the employee(s) on leave
  - **Exemption from** leave for employees caring for children because of a school or daycare closure  
(expanded FML and paid sick leave for this reason)

# THE AMERICANS WITH DISABILITIES ACT

- The ADA prohibits employers from making disability-related inquiries or requiring medical exams, unless:
  - (1) the inquiry or exam is job-related and consistent with business necessity, or
  - (2) employer has a reasonable belief that the employee poses a **direct threat** to the health or safety of the individual or others that cannot otherwise be eliminated or reduced by reasonable accommodation
- Hot issue: Employee temperature testing

## TITLE VII

- Title VII prohibits employment discrimination based on **race, color, religion, sex** and **national origin**.
- Any employer policies or rules related to coronavirus should be implemented in a **non-discriminatory** and **uniform** way.
  - Caution to engaging in national origin discrimination!

# THE FAIR LABOR STANDARDS ACT (FLSA)

- Considerations for furloughs and layoffs
  - The FLSA requires employers to pay employees for hours actually worked.
  - Exempt, salaried employees generally must receive their full salary in any week in which they perform any work.
- Use of PTO (PTO not salary)
- Salary or pay reductions – issues to watch

# THE OCCUPATIONAL SAFETY AND HEALTH ACT

- The General Duty Clause (29 U.S.C. § 654(a)(1))
- Recordkeeping Requirements (29 C.F.R. 1904)
- Sanitation Standard (29 C.F.R. 1910, Subpart J)

# STATE WORKERS' COMPENSATION

- If an employee contracts COVID-19 **at work** or while on **business travel**, it could be considered a job-related illness or injury.
- An employer should notify its workers' compensation broker in the event there is coverage.



# CLOSINGS, LAYOFFS AND FURLOUGHS

- WARN Act

Employers with 100+ employees:

- Plant closing (50+ employees) or
- Employment loss for 50+ employees = at least 33% workforce at that site or 500+ employees at site
- “Employment loss”
  - Permanent or temporary (6+ mos.) layoff
  - 50% reduction in hours for 6+ mos.

# CLOSINGS, LAYOFFS AND FURLOUGHS

- WARN Act

  - Requirement:*

    - 60 days' notices

  - Exceptions:*

    - Unforeseeable business circumstances
    - Natural disaster?

- Mini WARN Acts

The image features a microscopic view of several virus particles, likely coronaviruses, characterized by their spherical shape and prominent, radiating spike proteins. These particles are set against a background of a fine, orange-toned grid pattern. The overall color palette is dominated by warm, orange and red hues, creating a sense of urgency and scientific focus. A solid dark blue horizontal band is positioned across the middle of the image, serving as a backdrop for the main title.

# EMPLOYER BEST PRACTICES

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- Workforce education
- Train employees on the spread of COVID-19
- Policies in response to cases of COVID-19 in the workplace
- Risk assessment
- Develop policies related to travel
- Develop teleworking policies
- Remind employees of paid time off and sick leave
- Remind employees of all company safety & reporting policies

The image features a central dark blue horizontal band containing the word "QUESTIONS" in white, bold, sans-serif capital letters. Above and below this band are two horizontal strips showing a microscopic view of virus particles. The particles are spherical with numerous thin, hair-like projections (spikes) extending from their surfaces. They are set against a background of a fine, light-colored grid pattern, which is overlaid on a darker, reddish-orange textured surface. The overall color palette is dominated by warm tones of orange, red, and brown, with the central blue band providing a sharp contrast.

# QUESTIONS

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