

Labor & Employment Law Alert: The Families First Coronavirus Response Act

On March 24, 2020, the Wage and Hour Division of the U.S. Department of Labor (“USDOL”) issued preliminary guidance concerning the Families First Coronavirus Response Act, which includes the federal Emergency Paid Sick Leave Act (“EPSLA”) and the Emergency Family and Medical Leave Expansion Act (“Emergency FMLEA”).

The USDOL guidance confirms our advice that employers with related entities are only considered a single employer for determining whether they have 500 or more employees if they meet the integrated employer test. This is important because employers with 500 or more employees do not have to provide benefits under the EPSLA or the Emergency FMLEA. No single criterion determines whether a related entity qualifies as an integrated employer. Instead, the totality of the relationship between the entities must demonstrate a certain degree of overlap in operational and financial control. Key factors considered in determining whether two or more entities are an integrated employer include whether there is common management and centralized control of labor relations and the degree of common ownership/financial control.

Also, the USDOL clarified that an employer’s total number of employees is to be determined by the number of employees employed *at the time an employee’s leave is to be taken*. Employees on paid or unpaid leave would still count as employees. However, employees who are laid off or otherwise terminated do not count. Thus, if employers lay off employees during the COVID-19 crisis and fall below 500 employees, they would be required to provide leave under the EPSLA and FMLEA to employees who apply for leave while the employer is below this threshold.

The USDOL guidance does not provide any substantive information regarding how employers with less than 50 employees can apply for the small business exemption from the EPSLA and FMLEA, except to note that employers should not send materials to the USDOL at this time. The USDOL also noted that regulations are expected to be issued in April 2020, and under those regulations “certain provisions will not apply to certain employers with fewer than 50 employees.”

Many other questions are answered in the USDOL’s guidance, which can be found here:

<https://www.dol.gov/agencies/whd>.

While we await forthcoming regulations from the USDOL, all employers with fewer than 500 employees should be advised that the agency has announced that these new federal laws go into effect on **April 1, 2020**.

Please visit our [Municipal](#), [Education](#) or [Labor & Employment](#) Practice Areas to learn more about the legal services we can provide in these areas. If you have any questions or would like more information on the issues discussed in this communication, please contact any member of the Labor & Employment Practice Area.

As employers navigate these issues, our Firm's labor and employment attorneys are standing by to provide legal advice.

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