

Baird Holm Labor Law Forum Webinar Series

Session Six

The content and legal accuracy of this presentation is subject to change. We caution you that this information is intended as general information only and should not be construed as legal advice as to any particular matter. The presentation and viewing of this webinar does not establish an attorney-client relationship between the viewer and Baird Holm or any of its attorneys.

COVID-19 Update for Employers

R.J. (Randy) Stevenson,
Kelli P. Lieurance, Scott S. Moore,
and Morgan L. Kreiser

COVID-19 Update for Employers

A panel of our attorneys will discuss the latest COVID-19 issues facing employers, as well as steps they can take to mitigate the impact of the pandemic. The discussion will cover recent legislative developments, regulatory guidance, and court decisions involving matters such as telecommuting, employee safety and health, paid time off, and employee benefits.

FFCRA Updates

“Health Care Provider”

- Two definitions in FFCRA
 - One definition for purposes of who may advise an individual to self-isolate due to COVID-19, and to medical professionals from whom an individual with symptoms seeks medical diagnosis
 - Traditional FMLA definition applies

Original Definition

- Another definition for purposes of the right to exclude certain employees from FFCRA benefits
 - “[a]nyone employed at any doctor’s office, hospital...”
 - Covered almost anyone working in the healthcare industry

New Definition

- Any Employee who is a health care provider (under the traditional FMLA's definition); or
- Any other Employee who is capable of providing health care services, meaning he or she is employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care.

© 2020 BAIRD HOLM LLP

BH | BAIRDHOLM^{LLP}
ATTORNEYS AT LAW

"Health Care Provider"

- Practical Effect
 - Many employees may now be eligible for FFCRA benefits who were not before
 - Consider providing notice of new definition to previously excluded employees

© 2020 BAIRD HOLM LLP

BH | BAIRDHOLM^{LLP}
ATTORNEYS AT LAW

Work Availability

- DOL reaffirms that FFCRA may be taken only if the employee has work from which to take leave
- Work availability requirement applies to all FFCRA leave

© 2020 BAIRD HOLM LLP

BH | BAIRDHOLM^{LLP}
ATTORNEYS AT LAW

Intermittent Leave

- DOL reaffirms that employer approval is required to take intermittent FFCRA leave
- When is leave “intermittent” which requires employer consent?

© 2020 BAIRD HOLM LLP

BH | BAIRDHOLM^{LLP}
ATTORNEYS AT LAW

Example

- Alternate day/hybrid attendance school schedule
- Because schedule set by school, each day is a separate school closure (and separate reason for FFCRA leave)
- Not considered to be intermittent leave

© 2020 BAIRD HOLM LLP

BH | BAIRDHOLM^{LLP}
ATTORNEYS AT LAW

Notice Obligations

- Emergency Paid Sick Leave
 - Notice/documentation required only after first workday missed for leave
 - After that, notice should be given as soon as practicable
- Expanded FMLA
 - Notice/documentation required as soon as practicable
 - If leave foreseeable, it is generally practicable to provide notice before the leave

© 2020 BAIRD HOLM LLP

BH | BAIRDHOLM^{LLP}
ATTORNEYS AT LAW

EEOC Updates

Permissible COVID-19 questions
GINA concerns
Screening issues
Teleworking issues
Reasonable Accommodation issues

© 2020 BAIRD HOLM LLP

BH | BAIRDHOLM^{LLP}
ATTORNEYS AT LAW

OSHA Issues for Employers

OSHA jurisdiction regarding COVID-19
What OSHA expects from employers
Face masks versus respirators
OSHA recording issue
Prospective liability waivers
OSHA retaliation issues

© 2020 BAIRD HOLM LLP

BH | BAIRDHOLM^{LLP}
ATTORNEYS AT LAW

Tax Credits and Deferrals

- Payroll tax credit (FFCRA)
- Employee retention credit (CARES Act)
- Employer payroll tax deferral (CARES Act)
- Employee payroll tax deferral (Presidential Executive Order)

© 2020 BAIRD HOLM LLP

BH | BAIRDHOLM^{LLP}
ATTORNEYS AT LAW

Retirement Plan Relief

- Rollover relief for 2020 RMDs
- Coronavirus-related distributions
- Coronavirus-related plan loans
- In-person notarization and witness requirements relaxed for spousal consents
- Notice timeframes delayed

© 2020 BAIRD HOLM LLP

BH | BAIRDHOLM^{LLP}
ATTORNEYS AT LAW

Health and Welfare Plan Relief

- Coverage for COVID-19 testing
- HIPAA, COBRA, and claims-related timeframes delayed
- Flexibility for FSA and DCAP elections
- Relaxation of the "use-it-or-lose-it" rule for FSA claims

© 2020 BAIRD HOLM LLP

BH | BAIRDHOLM^{LLP}
ATTORNEYS AT LAW

Other

- Student loan payments
- Federally Declared Disaster
 - PTO donation policy
 - Hardship withdrawals
 - Disaster relief payments
- Unemployment and Short-Time Compensation

© 2020 BAIRD HOLM LLP

BH | BAIRDHOLM^{LLP}
ATTORNEYS AT LAW

Questions?

R.J. (Randy) Stevenson,
rstevenson@bairdholm.com

Kelli P. Lieurance,
klieurance@bairdholm.com

Scott S. Moore,
smoore@bairdholm.com

Morgan L. Kreiser,
mkreiser@bairdholm.com
