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INFORMATION ON CORONAVIRUS (COVID-19) PANDEMIC FOR SMALL AND MID-SIZE EMPLOYERS[1]

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The attorneys of Donnelly + Gross prepared an informational bulletin on March 26, 2020 for our small and mid-size business clients who have raised many questions and concerns about their workplace and their rights and obligations related to the coronavirus pandemic (COVID-19) particularly with regard to the Families First Coronavirus Response Act (FFCRA), Americans With Disabilities Act (ADA), Fair Labor Standards Act (FLSA), Occupational Safety and Health Act (OSHA), Worker Adjustment and Retraining Notification Act (WARN), workers compensation, and unemployment compensation.

We continue to closely monitor the situation and update this information to provide the latest workplace and legal developments related to COVID-19. We expect your questions and our answers will change as the situation develops. For answers to your specific questions and for the newest developments, please contact us at Donnelly + Gross at 352-374-4001 or directly by email:

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We are working and we are here to support you.

[1] This publication is for general information only and intended for clients and friends of Donnelly + Gross. It should not be relied upon as legal advice as the law related to each situation varies. Moreover, workplace law related to COVID-19 is dynamic and changing daily. The sharing of this information does not establish a client relationship.

FREQUENTLY ASKED QUESTIONS & ANSWERS

WORKPLACE SAFETY

1. What steps should employers be taking related to the COVID-19 pandemic?

- Inform employees about COVID-19 symptoms (fever, chills, cough, shortness of breath, sore throat) and tell employees not to come to work if they have any of these symptoms. Send home employees who are experiencing symptoms. Employees only get Emergency Paid Sick Leave, however, if they are both experiencing the symptoms and seeking a medical diagnosis.
- Take proactive steps to protect the workplace and comply with OSHA. Institute social distancing, face masks, monitoring for symptoms, and hand washing. Increase routine cleanings, particularly in high traffic and common areas. Space workstations. Increase remote-work capabilities. Modify visitor policies.
- When social distancing is not possible, as when two employees must travel to a jobsite in one vehicle, then separate the employees in the vehicle to the fullest extent possible (one in front seat, one in back), continuously monitor for symptoms, and make sure employees frequently wash hands.
- Share advice from public health authorities like the CDC about handwashing, reporting of illness and reporting of travel.
- Notify employees if a coworker is diagnosed with COVID-19.
- Now is a good time to remind employees of applicable leave policies (paid or unpaid) and telecommuting or remote work policies. **UPDATED 4/17/2020**

2. What should I do when an employee has tested positive for COVID-19?

- Send home the employee, and all employee who worked closely with that employee to ensure the infection does not spread.
- Employees are to stay home until 14 days after last exposure per CDC recommendations or at least 7 days from the initial onset of symptoms, 3 days without a fever, and improvement in respiratory symptoms.
- Ask the employee to identify all individuals with whom they worked in close proximity (6 feet) from a prolonged period of time (10 minutes or more) during the 48 hours before the onset of symptoms.
- Do not identify the name of the infected employee.
- Close off areas used by the ill person and wait as long as practical to begin cleaning and disinfecting to avoid exposure to respiratory droplets.
  UPDATED 4/17/2020

3. **Is COVID-19 by an employee a recordable illness under OSHA's recordkeeping requirement?**

   Possibly. Covered employers (more than 10 employees) who are required to keep a record of serious work-related injuries and illnesses under the Occupational Safety and Health Act (OSHA) must record cases of COVID-19 if the COVID-19 case is: (1) confirmed; (2) work-related; and (3) involves one or more of the general recording criteria (e.g., results in death, days away from work, medical treatment beyond first aid). Due to the difficulty in making determinations about whether the COVID-19 exposure was work-related in areas where there is ongoing community transmission, the DOL has issued a guidance that most employers will not be required to make a work-relatedness determination for COVID-19 cases except where: (1) there is objective evidence of work-relatedness exposure; and (2) such evidence was reasonable available to employers. The healthcare industry, among others, must make a work-relatedness determination. **UPDATED 4/17/2020**

4. **Can employees refuse to come to work because they are afraid of being exposed to COVID-19 infection?**

   Under OSHA, employees may refuse to come to work or perform certain tasks if they believe they are in "imminent danger" as defined in the law. Employees must believe that death or serious physical harm could occur and that such threat is immediate or imminent. Most working conditions will likely not rise to this level, but the situation behind COVID-19 is fast changing and evolving and will need to be evaluated on an individualized basis. **UPDATED 4/17/2020**

5. **Must employers provide, or allow employees to wear, a mask or respirator?**

   The type of personal protective equipment (PPE) employers are required to provide employees to keep them safe while performing their job during the pandemic, depends on the type of job and risk of being infected with COVID-19 while working. A respirator is only required when necessary to protect the health of employees such as workers who provide direct care to patients with known or suspected COVID-19. Otherwise, employers in most circumstances are not quired to provide surgical masks or respirators to their employees.

   The effects of the pandemic on the workplace, including PPE requirements, are evolving. Recently, OSHA has issued series of industry-specific alerts and guidance such as for retail workers and package delivery workforce to include

allowing workers to wear masks over their noses and mouth to prevent them from spreading the virus. Local governmental entities have or may also issue orders requiring employers to permit employees to wear PPE of choice during the performance of their work. Moreover, given the CDC's April 3 recommendation with regards to cloth face coverings in public settings to slow the spread of COVID-19, employers should not refuse an employee's request to wear a mask or face covering at work. **UPDATED 4/17/2020**

WORKERS COMPENSATION

6. Are employees who are exposed to COVID-19 at work entitled to workers compensation?

It depends. Frontline state employees who have tested positive for COVID-19 are eligible to receive worker's compensation coverage for medical treatment and lost wages, unless the State can show that the employee contracted COVID-19 outside the scope of their employment. Covered employees include law enforcement officers, firefighters, EMTs, paramedics, correctional officers and health-care workers. Otherwise, there is currently no legal presumption in favor of providing workers compensation coverage to any other employees who are exposed, become symptomatic, or must quarantine due to COVID-19. Additionally, given the number of persons infected and the fact that many carriers are asymptomatic, it can be very difficult to determine where an employee who tests positive first became exposed. Employers should process Notice of Injury Reports related to COVID-19 pursuant to their normal practice. **UPDATED 4/17/2020**

PAID LEAVE (FFCRA)

7. What is the effective date of the Families First Coronavirus Response Act (FFCRA), and what is its purpose?

The law is effective on April 1, 2020 and applies to leave taken between April 1 and December 31, 2020. FFCRA is intended to help combat the workplace effects of COVID-19 by providing time-limited paid leave relief and protections to employees who are unable to work due to specified COVID-19 reasons. Employers are reimbursed with tax credits by the government for the costs of providing paid leave under the FFCRA. **UPDATED 4/17/2020**

8. Does the FFCRA apply to my business and employees?

The law generally applies to employers with less than 500 employees. There are two notable exceptions:

a. Employers with less than 50 employees may qualify for exemption only from the requirement to provide paid leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

b. Health care providers and emergency responders may be excluded by the Department of Labor (DOL) or the employer. For purposes of whether they may be excluded, the DOL has adopted a broad definition of "health care provider" to mean anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, Employer, or entity and to include any individual employed by an entity that contracts with these institutions where the individual's services support the operation of the facility. The term "emergency responder" is also broadly defined to include police, fire/rescue employees, emergency medical services personnel, physicians, nurses, public health personnel and other support personnel needed in a declared emergency. **UPDATED 4/17/2020**

9. How can employers with less than 50 employees show that the leave requirements would jeopardize the viability of the business as a going concern?

Employer must meet one of the following criteria: (1) leave would result in the business's expenses and financial obligations exceeding available business revenue and cause it to cease operating at a minimal capacity; (2) the absence of the employee(s) requesting leave would pose a substantial risk to the financial health or operational capabilities due to their specialized skills, knowledge of the business or responsibilities; or (3) there are insufficient workers who can perform the labor or services performed by the employees requesting leave, which are needed for the business to operate at a minimal capacity.

There is no application or approval process. Employers should document that an authorized officer of the business has made this determination and maintain records necessary to support the need for the exemption. **UPDATED 4/17/2020**

10. Do employers have an obligation to notify employees about their leave rights under the FFCRA?

Yes. Employers must notify the employees of their rights under the FFCRA by posting the notice in a conspicuous place, posting it on its website or emailing or mailing the notice directly to employees. A sample notice prepared by the DOL can be used and can found on its website. **UPDATED 4/17/2020**

11. What are the paid leave requirements under the FFCRA?

a. Emergency Paid Sick Leave Act (EPSLA). All employees, regardless of length of employment, are entitled to up to 2 weeks (80 hours or 10 days) of paid sick leave (PSL). Part time employees are entitled to the number of hours of paid sick leave equal to the number of hours they work, on average, over a two-week period in the six months prior to the leave.

- PSL is available to employees who cannot work or telework because they:

    1. *Quarantine/Isolation Order*. Are subject to government quarantine or isolation order related to COVID-19.
    2. *Self-Quarantine*. Have been advised by healthcare providers to self-quarantine due to COVID-19.
    3. *COVID-19 Symptoms*. Are experiencing symptoms of COVID-19 and seeking a medical diagnosis.
    4. *Care for Others*. Are caring for an individual subject to a quarantine order or self-quarantine as described above.
    5. *School/Childcare Closure*. Are caring for children whose school/place of care is closed or caregiver is unavailable because of a public health emergency declared by a federal, state, or local authority.
    6. *Similar Conditions*. Are experiencing a substantially similar condition, as specified by the Secretary of Health and Human Services (catch-all).

- Employees who are absent for reasons 1-3, must be paid at the higher rate of (i) their regular rate of pay or (ii) the federal minimum wage or (iii) the local minimum wage. Payments are capped at $511 per day and $5,110 total.

- Employees who are absent for reasons 4-6, are compensated at two-thirds of their regular rate, capped at $200 per day and $2,000 total.

b. Emergency Family and Medical Leave Expansion Act (e-FMLA or EFMLEA). Employees who have been working for at least 30 days, are entitled to up to 12 weeks (the first two weeks/10 days of which are unpaid) of job-protected leave to care for their children whose school/place of care is closed or caregiver is unavailable because of a public health emergency declared by a federal, state, or local authority. This is the only reason this form of leave (e-FMLA leave) is available. Employees are paid at two-thirds of their regular rate up to $200 per day and $10,000 total.

12. May employees take both types of leave—how do they work together?

Employees may be eligible for both types of leave which may work together to provide a total of 14 weeks of job-protected leave (a total of 12 weeks may be paid). For instance, an employee may take two weeks of paid sick leave to self-quarantine under medical advice and then 12 weeks of leave for childcare, 10 of which must be paid.

Moreover, employees who are unable to work in order to care for a child whose school is closed may take both paid sick leave (PSL) and e-FMLA leave concurrently, in which case PSL covers the first two weeks (10 days) of unpaid leave under e-FMLA leave. If an employee has exhausted PSL, the employee may substitute any earned or accrued paid leave under the employer's preexisting policies for these two weeks of unpaid leave. **UPDATED 4/17/2020**

13. What if employees have paid leave under the employer's existing policies which they can use for COVID-19 reasons?

Paid sick leave under the EPSLA is in addition to whatever sick leave is already offered by employers, and employees cannot be required to first use any other accrued paid leave. In the case of e-FMLA, after the first two weeks, employers may require employees to concurrently take paid leave available (such as personal leave or paid time off) under the employer's existing policies.

The law authorizes employers to change their own internal paid leave policies to the extent consistent with the law. **UPDATED 4/17/2020**

14. May employees take paid sick leave or e-FMLA leave intermittently while teleworking?

Yes, but only if the employer agrees. Intermittent leave (reduced schedule leave) may be taken in any agreed-upon increment. **UPDATED 4/17/2020**

15. May employees use paid sick leave or e-FMLA leave intermittently at their regular worksite if they cannot telework?

It depends. By agreement, employers may permit employees to take PSL or e-FMLA leave intermittently if the leave is to take care of their child whose school or place of care is closed, or whose childcare provider is unavailable, because of COVID-19 related reasons.

PSL cannot be taken intermittently at the worksite for any other COVID-19 related reasons (such as when employees are taking care of qualifying individuals under quarantine). **UPDATED 4/17/2020**

16. Are employers required to reinstate employees who take paid leave under the FFCRA?

Employers of 25 or more employees must reinstate employees who take paid leave under the law. Employers of less than 25 employees do not have to reinstate employees who take e-FMLA leave if:

- The position no longer exists due to economic or operating conditions that affect employment and are caused by a public health emergency;
- The employer makes reasonable efforts to restore the employee to the same or equivalent position; and
- The employer makes reasonable efforts to contact the employee if an equivalent position becomes available during the 1-year period following the employee's e-FMLA leave.

However, employees are not protected from employment actions, such as layoffs, that would have affected them regardless of whether the leave was taken. The burden will be on the employer to show that the employee would have been laid off regardless of the leave taken. **UPDATED 4/17/2020**

17. Are employees entitled to paid leave when the employer's business or worksite is closed?

Employees are not eligible for leave under the FFCRA during any period that the employer's business or worksite is closed, whether for lack of business or because of a federal, state, or local order or directive. However, when an employer closes while the employee is on leave, the employer must pay for the leave the employee used before the closure. **UPDATED 4/17/2020**

18. Are employees who are laid off or furloughed entitled to paid leave?

Employees who are laid off or furloughed are not eligible for leave under FFCRA. However, employees who were on leave for COVID-19 qualifying reasons prior to the date of any layoff or furlough, must be paid pursuant to FFCRA. **UPDATED 4/17/2020**

19. Are employees entitled to paid sick leave if they believe they have been exposed or have COVID-19 symptoms and are self-isolating?

Employees who have symptoms but are not seeking medical diagnosis or are unilaterally self-quarantine without medical advice, are generally not eligible for PSL. Employees may be entitled to sick leave or paid time off under the employer's existing policy, but any such leave provided is not subject to government reimbursement. **UPDATED 4/17/2020**

20. Are employees entitled to paid sick leave if they cannot work due to a shelter-in-place or stay-at-home order?

Yes, if the employer has work that the employee could perform. A government quarantine or isolation order includes "shelter-in-place or stay-at-home orders" issued by a federal, state, or local government authority that cause an employee to be unable to work (or to telework) even though the employer has work that the employee could perform but for the order. This includes when a government authority has advised categories of citizens (e.g., of certain age ranges or of certain medical conditions) to shelter-in-place, stay-at-home, isolate, or quarantine, causing those categories of employees to be unable to work even though their employers have work for them. However, the employee is not eligible if the employer does not have work for the employee as a result of a shelter-in-place or a stay-at home order. **UPDATED 4/17/2020**

21. What qualifies as a "substantially similar condition" entitling employees to paid sick leave?

The U.S. Department of Health and Human Services (HHS) has not yet identified what qualifies as a "substantially similar condition" that would allow an employee to take paid sick leave. **UPDATED 4/17/2020**

22. Is an employee who has used some or all of leave under the FMLA still eligible for e-FMLA?

Employees may take a total of 12 workweeks for FMLA or expanded family and medical leave reasons during a 12-month period. Therefore, for employers who were covered by the FMLA prior to April 1, 2020, if an employee has already taken some FMLA leave, the amount of leave available under e-FMLA is reduced, and an employee who has exhausted FMLA leave is not eligible for more. Employees with COVID-19 qualifying reasons are eligible for paid sick leave under the EPSLA regardless of how much leave they have taken under the FMLA. **UPDATED 4/17/2020**

23. Who qualifies as a "son or daughter" for purposes of qualifying for paid leave to provide care to a child due to school closure or unavailability of a caregiver?

Under the FFCRA, a "son or daughter" is the employee's own child which includes biological, adopted, or foster child, stepchild, a legal ward, or a child for whom the employee is standing in loco parentis—someone with day-to-day responsibilities to care for or finally support a child. DOR has issued a guidance that an adult child who is 18 or older and has a physical or mental disability that requires care that isn't available because of COVID-19 shutdowns is included. **UPDATED 4/17/2020**

24. Are employees entitled to paid leave to care for any individual who is subject to a quarantine/isolation order or have been advised to self-quarantine?

No. The individual must be a family member, someone residing in the same household, or someone whom the employee would be expected to care for based on personal relationship with the employee. And, there must be a genuine need for the employee to care for the individual. **UPDATED 4/17/2020**

25. What information should employers get from employees who request leave under the FFCRA?

Regardless of whether leave is granted or denied, employers must document:

- the name of the employee requesting leave;
- the date(s) for which leave is requested;
- the reason for leave (including as applicable the name of the government entity issuing the quarantine or isolation order; the name of the health care provider advising self-quarantine; the name of the individual the employee is caring for and relation to the employee); and
- the employee's statement that he or she is unable to work or telework due to the reason.

If an employee is requesting leave to care for a child whose school is closed or childcare provider is unavailable, employers must document:

- the name of the child being cared for;
- the name of the school or childcare provider that has closed or become unavailable; and
- a statement from the employee that no other suitable person is available to care for the child.

Further, if the child is older than 14, the IRS has issued a guidance that the employee must include a statement that special circumstances exist requiring the employee to provide care to the child during daylight hours. The IRS has not defined or given examples of special circumstances which might permit an employee to care for a child age 15 to 17. Documentation is important for employers who intend to claim a tax credit under the FFCRA. Employers should retain all documentation and information provided by employees seeking leave under FFCRA for four years. **UPDATED 4/17/2020**

26. Can employers deny leave to employees who do not provide information sufficient to support that leave is for COVID-19 qualifying reason?

Yes, employers do not have to provide leave to employees who do not supply information sufficient to support the applicable tax credit under FFCRA. **UPDATED 4/17/2020**

27. How are employers reimbursed for payments made under the FFCRA?

The costs of providing for the leave are initially paid by the employer who will be fully reimbursed, dollar-for-dollar including for any health insurance and payroll taxes paid by the employer (or self-employed individual), through payroll tax credits.

Examples from IRS, Department of Treasury, and Department of Labor

Example 1: An eligible employer paid $5,000 in sick leave and is otherwise required to deposit $8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to $5,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining $3,000 on its next regular deposit date.

Example 2: If an eligible employer paid $10,000 in sick leave and was required to deposit $8,000 in taxes, the employer could use the entire $8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining $2,000.

28. What are the penalties for employers who fail comply with EPSLA?

Employers who fail to provide paid sick leave are considered to have failed to pay minimum wages in violation of the Fair Labor Standards Act (FLSA) and are subject to enforcement proceedings under the FLSA. Employees have the right to bring a private action against employers in federal or state court. **UPDATED 4/17/2020**

29. What are the penalties for employers who fail to comply with e-FMLA?

The same enforcement provisions of the FMLA apply for violations of the e-FMLA. However, a private action is available only against employers who are subject to the FMLA (i.e., has had 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year, within 75 miles of the worksite of the employee who requests the leave). **UPDATED 4/17/2020**

30. Does the FFCRA apply to self-employed individuals?

Equivalent childcare leave and sick leave credit amounts are available to self-employed individuals under similar circumstances. These credits will be claimed on their income tax return and will reduce estimated tax payments.

AMERICANS WITH DISABILITIES ACT (ADA)

31. During the COVID-19 pandemic, may an employer covered by the ADA send employees home for displaying influenza-like symptoms?

Yes. An employer may send home an employee with COVID-19 or symptoms associated with it.

32. During the COVID-19 pandemic, how much information may an ADA-covered employer request from employees who report ill at work or who call in sick?

Employers may ask such employees questions about their symptoms to determine if they have or may have COVID-19. Currently, these symptoms include, for example, fever, chills, cough, shortness of breath, or sore throat.

33. During the COVID-19 pandemic, may an ADA-covered employer take its employees' temperatures to determine whether they have a fever?

Yes. Because the CDC and other health authorities have acknowledged community spread of COVID-19 and issued attendant precautions as of March 2020, employers may measure employees' body temperature. As with all medical information, the fact an employee had a fever or other symptoms would be subject to ADA confidentiality requirements.

34. During the COVID-19 pandemic, may an ADA-covered employer ask employees if they are living with or have been exposed to anyone who has been diagnosed with COVID-19? If so and if the answer is yes, may the employer require the employee to stay away from work for 14 days?

Yes, an employer may ask employees questions about exposure to COVID-19, specifically about exposure to persons with COVID-19 and travel and may

require them to stay away from work for 14 days. If they are subject to an isolation order, have been advised by healthcare provider to self-quarantine, or are suffering symptoms and seeking a diagnosis, they will be entitled to Emergency Paid Sick Leave. Otherwise, whether the employee will be paid depends on the employer's paid leave policy and whether work can be performed at home and the nature of job classification, exempt or nonexempt. **UPDATED 4/17/2020**

35. During the COVID-19 pandemic, when an employee returns from travel, may an employer ask questions about exposure to COVID-19 during the trip?

Employers may follow the advice of the CDC and state/local public health authorities regarding information needed to permit an employee's return to the workplace after visiting a specified location, whether for business or personal reasons.

36. During the COVID-19 pandemic, may an ADA-covered employer ask employees who do not have influenza symptoms to disclose whether they have a medical condition that the CDC says could make them especially vulnerable to complications?

No.

37. During the COVID-19 pandemic, if an employee voluntarily discloses that that they have a specific medical condition or disability that puts them at increased risk of influenza complications, what should the employer do?

The employer must keep this information confidential. The employer may ask the employee to describe the type of assistance that the employee thinks is needed (e.g. telework or leave). Employers should not assume that all disabilities increase the risk of influenza complications as many do not (e.g. vision or mobility disabilities). Employers may have sufficient objective information from public-health advisories to reasonably conclude that employees will face a direct threat if they contract pandemic influenza. Only in this circumstance may ADA-covered employers make disability-related inquiries or require medical examinations of asymptomatic employees to identify those at higher risk of influenza complications.

38. During and after the COVID-19 pandemic, may an ADA-covered employer require employees who have been away from the workplace to provide a doctor's note certifying fitness to return?

Yes. Such inquiries are permitted under the ADA either because they would not be disability related or they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care practitioners may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an email to certify that an individual does not have COVID-19.

39. During the COVID-19 pandemic, may employers screen applicants for COVID-19?

Yes. An employer may screen applicants for symptoms of COVID-19 after making a conditional job offer, if it does so for all employees in the same type of job. The ADA rule allowing post-offer but not pre-offer medical inquiries and exams applies to all applicants, whether or not the applicant has a disability.

40. During the COVID-19 pandemic, may an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?

Yes. Based on current CDC guidelines, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

WAGE AND HOUR

41. Do employers have to pay an employee who is sent home or stays home due to suspected COVID-19 or possible exposure to COVID-19?

FFCRA paid leave requirements aside, the minimum wage and overtime obligations under the FLSA generally apply only to the hours actually worked in a workweek. However, if a salaried employee who is exempt under the FLSA performs some work in the workweek, the employee should be paid the entire salary for the workweek regardless of the number of days or hours worked. Deductions may be made without jeopardizing the exempt status if: (1) the

employee is absent for one or more full days for personal reasons other than sickness or disability; or (2) the deduction for a full day or more absence for sickness or disability is made in accordance with a bona fide policy. An employee who is absent for a full workweek does not need to be paid. **UPDATED 4/17/2020**

42. Do employers have to pay exempt employees their full salary during a week in which the office/workplace is partially closed due to COVID-19 pandemic or other public health emergency?

Where the absence is occasioned by the office closure, salaried employees must receive their guaranteed salary for any week in which they perform work, to maintain their exempt status. However, employers may direct exempt employees to take vacation or accrued leave during an office closure so long as the employees receive payment equal to their guaranteed salary. **UPDATED 4/17/2020**

43. Do employers have to pay the same hourly rate or salary to employees who telework?

Yes, if telework is being provided as a reasonable accommodation for an individual with a disability. Otherwise, non-exempt employees who telework for COVID-19 related or other reasons are generally required to be paid only for the hours they actually work consistent with the minimum wage and overtime requirements under the FLSA. As with office or on-site work, non-exempt employees who telework must record all hours actually worked, including overtime, in accordance with the requirements of the FLSA. An employer is not required to compensate employees for unreported hours worked while teleworking, unless the employer knew or should have known about such telework. Salaried exempt employees must generally receive their full salary in any week in which work is performed. **UPDATED 4/17/2020**

44. Do employees who telework for COVID-19 related reasons have to be paid for all time between the first and last principal activity performed by the employees just as when they were not teleworking?

No. The DOL has determined that the continuance workday rule which generally requires compensation for all time between performance of the first and last principal activities as compensable work time, does not apply to employees who telework for COVID-19 related reasons. This is to encourage employers and

employees may implement a flexible telework arrangement that allows employees to perform work, potentially at unconventional times when there are less distractions, while tending to family and other responsibilities at other times. **UPDATED 4/17/2020**

SOCIAL MEDIA

45. Can employers discipline employees for their activities on social media that discuss their workplace concerns related to COVID-19 that puts the workplace in a negative light?

The National Labor Relations Act (NLRA) provides protection to employees—in both union and non-union setting—who engage in "protected concerted activity for mutual aid or protection." The National Labor Relations Board (NLRB) enforces the law and considers "talking with one or more employees about working conditions," "participating in a concerted refusal to work in unsafe conditions" or "joining with co-workers to talk to the media about problems in your workplace" to be protected concerted activity. As such, employers should take caution against taking disciplinary actions against employees based on social media posting and activities that discuss workplace concerns related to COVID-19 which may be considered protected. **UPDATED 4/17/2020**

WARN ACT

46. Are employers who suspend or close operations temporarily due to the effects of COVID-19 required to provide notice under the WARN Act?

Employers covered by the Worker Adjustment and Retraining Notification Act (WARN) Act—those with 100 or more full-time employees—who implement a "plant closing" or "mass layoff" are generally required to provide advance notice to their employees (at least 60 days). Not every layoff or plant closing triggers the WARN Act notice requirement. COVID-19 may qualify as unforeseen business circumstances providing for an exception to the 60-day notice rule but regardless, notice required for a qualifying "plant closing" or "mass layoff" must be communicated as soon as practicable. **UPDATED 4/17/2020**

UNEMPLOYMENT COMPENSATION

47. Are employees who are temporarily laid off due to effects of COVID-19 entitled to unemployment compensation?

Yes, employees on temporary layoff may be eligible for unemployment compensation (Reemployment Assistance) benefits. Employees on temporary layoff with an expectation to return to work within 8 weeks do not need to seek work with other employers but must be able to work, stay in touch with employers and be available to work when called back for work by employers. **UPDATED 4/17/2020**

48. Are employees who are furloughed or whose hours are reduced due to effects of COVID-19 entitled to unemployment compensation?

Yes, employees whose hours and earnings have been substantially reduced may be eligible for unemployment compensation (Reemployment Assistance) benefits. **UPDATED 4/17/2020**

49. Are employees who refuse to come to work because of the risk of exposure to COVID-19 entitled to unemployment compensation?

In most circumstances, no. Unemployment compensation is available for individuals who are unemployed through no fault of their own. **UPDATED 4/17/2020**

50. Is an employer responsible for paying back dollar for dollar unemployment compensation for COVID-19 related reasons?

Currently, there have been no modifications to Florida law regarding employer's chargeability, contributions and/or reimbursements due to COVID-19. Employers' cost or chargeability to the tax account for regular unemployment compensation benefits paid to employees who are unemployed or underemployed due to COVID-19 related reasons are calculated in the same way as benefits paid under any other qualifying circumstances.

Florida employers pay a tax on the first $7,000 of payroll per employee (starts from a 2.7% which may decrease to a minimum of .1% assuming no claims are filed). All funds are paid into a pool to pay benefits. When a claim is filed and benefits are paid, an employer's tax rate will be adjusted upwards (capped at

5.4%) until the benefits paid out to the employee are paid back the State. Employers may seek details regarding the determination of the tax rates from the Florida Department of Revenue. **UPDATED 4/17/2020**

51. What are the expanded unemployment compensation benefits related to COVID-19 pandemic and are employers charged with the costs?

Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the federal government created several temporary programs directed towards mitigating the effects of COVID-19 pandemic on the workforce. Costs of these programs are 100% federally funded. States may not charge employers for benefits paid under these programs.

Under the Pandemic Emergency Unemployment Compensation (PEUC) program, individuals who have exhausted their regular unemployment benefits may receive up to 13 weeks of benefits (expires at the end of the year).

Under Pandemic Unemployment Assistance (PUA), further benefits up to 39 weeks may be available to eligible individuals including those who have exhausted all rights under regular unemployment compensation or extended benefits under PEUC (also expires at the end of the year). PUA benefits are also available to independent contractors, self-employed, gig workers and those who otherwise do not qualify for regular unemployment compensation.

Under the Federal Pandemic Unemployment Compensation (FPUC) program, a temporary $600 additional weekly payment is provided to individuals receiving regular unemployment compensation benefits, PEUC or PUA benefits (but only through the end of July). **UPDATED 4/17/2020**