### **COVID-19 & YOUR BUSINESS WEBINAR SERIES - PART II**









#### For more information:

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### **WELCOME**

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# FLSA, FMLA, ADA, EEO and the FFCRA with COVID-19

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### **The FLSA and COVID-19**

#### Is pay required for absences?

- Hourly (nonexempt) Workers
- Salaried (exempt) and Salary Reductions
  - Private Employers
  - Government Agency Employers
- For more information:

https://www.dol.gov/agencies/whd/flsa/pandemic

https://www.eeoc.gov/facts/telework.html

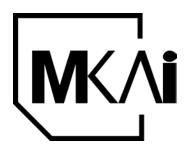
https://www.osha.gov/Publications/OSHA3990.pdf



### **The FLSA and COVID-19**

### **Working from Home - Telecommuters**

- Hourly (nonexempt) Workers
  - Time Records
  - Travel time to and from work by a home worker
- Business Expenses of Incurred by a Home Worker
  - Internet service, etc.
- Salaried Exempt Workers
  - Time records NOT required by law
  - Business Expenses



### **The FMLA and COVID-19**

### **Current Family & Medical Leave Act**

- Eligible Employee
- Unpaid Leave
- Traditional Reasons for "Days of Incapacity"
  - Time Records
  - Travel time to and from work by a home worker
- Job and Insurance Protection



### **Expansion of the FMLA - The E-FMLA**

- Triggered by a declared national, state, or local public health emergency and expires December 31, 2020.
- Covered employers include private and public employers as defined by FLSA Section 3(e) including those with less than 50 employees.
- Exempted employers are private employers with 500 or more employees.
- Eligible employees are those defined by FLSA Section 3(e) who have been on the payroll for at least 30 calendar days.
- Provides up to 12-weeks of job-protected FMLA leave (absence from work) immediately with no waiting period for "a qualifying need related to a public health emergency."



### E-FMLA Leave for a Qualifying Need

Private employers with less than 500 employees and public agency employers must provide job protected leave for absences due to:

- (1) Due to a federal, state or local quarantined or isolation order
- (2) Self-quarantined at the request of their health care provider
- (3) Experiencing symptoms of COVID-19 and seeking medical diagnosis
- (4) Caring for a person who was advised to quarantine or self-isolate
- (5) Caring for their son or daughter whose school or place of care is closed or their child care provider is not available due to COVID-19
- (6) Or the employee is experiencing "substantially similar conditions"



#### **E-FMLA Paid Leave**

- First 10-days is unpaid leave. The employee, solely at their option, can elect to use their earned vacation, personal, medical, or sick leave.
- After the first 10-days, employer pays 2/3rds of their regular rate as defined by FLSA Section 7(e)
- For conditions (1), (2) and (3) is \$511 per day and \$5110 in the aggregate
- For conditions (4), (5) and (6) is \$200 per day and \$2000 in the aggregate

Paid E-FMLA ceases when the employee returns to work. Leave cannot be banked or carried forward.



### **E-FMLA Exemptions and Tax Credits**

- The FFCRA allows for some exemptions as determined by the SOL for employers with less than 50 and less than 25 employees in the forthcoming regulations.
- Employer with fewer than 25 employees are shielded from liability for job protection as provided by the SOL.
- Health care providers and emergency responder employers can exclude such employees from the E-FMLA provisions.
- Employers can pay more than the sick pay required.
- Maximum payroll tax credit is the amount paid not to exceed the maximum plus the cost of employer provided health insurance.



### **COVID-19 Unemployment Insurance**

- First week waiting period waived.
- Personal interview with claims representative waived.
- Online filing preferred.
- Special COVID-19 reason established, not questioned.
- Many other provisions and waivers "on the table"



### **The ADA and COVID-19**

### COVID-19 Infection is a "Direct Threat" to the Health and Safety of Others – Not a Disability

### What Can Employers Do/Require/Prohibit

- Prohibit those with fever and other symptoms from coming to work\*
- Prohibit or screen those caring for quarantined family members\*

\*Best to set and post a policy or directive – send email

- Can require the taking of an employee's temperature
- Send employees home who have symptoms
- Protect health information from disclosure keep related documents in separate file



### **The ADA and COVID-19**

#### **What Should Employers Not Do**

- Broadcast or disclose the employee's name with a health condition that is ill\*
  - or quarantined with a family member with a health condition ill (GINA\*)
- Complications from the infections can become a disability protected by the ADA

#### **EEOC Guidance:**

Go to www.eeoc.gov Click on link near the top of the landing page The ADA, the Rehabilitation Act and COVID-19





#### For more information:

- https://www.dol.gov/agencies/whd/flsa/pandemic
- https://www.eeoc.gov/facts/telework.html
- https://www.osha.gov/Publications/OSHA3990.pdf



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