

COVID-19 & YOUR BUSINESS WEBINAR SERIES – PART II



For more information:

PLEASE MUTE YOUR AUDIO. THANKS!

WELCOME

LINDSAY KEISLER
PRESIDENT/CEO
THE CHAMBER OF CATAWBA COUNTY



*Serving Good Employers Nationwide
Since 1986*



The use of this seal is not an endorsement by HRCI of the quality of the program. It means that this program has met HRCI's criteria to be pre-approved for recertification credit.

MARKKNUCKLES Associates, Inc.
363 First Avenue SW – PO Box 2246
Hickory, NC 28603

Web: www.MarkKnuckles.com
Email: Info@MarkKnuckles.com
Phone: 828-328-9241
Fax: 828-328-3622



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

Presenter

***Mark Knuckles, SPHR, SHRM-SCP
Management Consultant***

This conference and accompanying publication/s are providing information on human resource management topics. They are not intended to provide legal advice or to answer a specific legal problem. Mark Knuckles Associates, Inc. are not engaged in rendering legal advice and does not replace your legal counsel.



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**



Families First Coronavirus Response Act

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.”



Families First Coronavirus Response Act

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”



Families First Coronavirus Response Act

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.



Families First Coronavirus Response Act

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.



Families First Coronavirus Response Act

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”



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**



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>



MARKKNUCKLES Associates, Inc.

Post Office Box 2246
Hickory, NC 28603
828-328-9241
www.MarkKnuckles.com

Back Wage Defense ☀ Minimum Wage, Overtime,
Child Labor ☀ EEOC Charges & Responses ☀
Problem Employee Management ☀ Lawful
Terminations ☀ Exemption Determinations ☀ ADA
Reasonable Accommodation ☀ Work Place
Conduct Investigations ☀ FLSA, CRA, ADA, FMLA
Compliance Audits ☀ Worker's Compensation ☀
General HR Management ☀ Personnel Policies
Benefits ☀ Handbooks ☀ Special MW Certificate
Reviews ☀ ACA

©2020 MARKKKnuckles Associates, Inc. Hickory, NC *All Rights Reserved*