



## OBLIGATIONS OF EMPLOYERS AND EMPLOYEE RIGHTS AMIDST THE COVID-19 PUBLIC HEALTH EMERGENCY

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This publication is intended to address questions common to many employers and employees their rights and obligations during this unprecedented public health emergency due to COVID-19. The information contained herein is provided as general information but is not legal advice; every situation requires a review of the specific factual circumstances. If you would like advice on situations specific to your company or organization, please do not hesitate to **contact Jennifer Crancer of Chestnut Cambronne PA at (612) 767-3612** to discuss.

### *Overview*

The COVID-19 pandemic has created a myriad of questions for employees regarding their rights to health and safety, employment, insurance benefits, health benefits, and childcare protections. The government has taken several important actions to ensure that employees are given security amidst this uncertain time, and of equal importance, attempted to provide relief to employers who are obligated to provide unprecedented benefits for their employees. These mandates have come from the local, state, and federal level and vary in scope and application.

This summary is intended to give employees and employers an overview of their rights and benefits to which they are entitled during this COVID-19 public health emergency. It is important to note that new laws are being enacted daily, which could affect the employee and employer benefits discussed in this summary.

### **1. *Can Employees Work From Home?***

Employees are put in the difficult position of trying to maintain their health and keeping their jobs. While many employers are taking substantive steps to help employees work from home to secure workplace safety, unfortunately, for many Americans, staying home is not an option.

In these circumstances, employees do not have ultimate control to determine whether they work from home or are required to go into the office. While the concerns that healthy employees may catch the virus may be legitimate, it is not legally protected. If an employee is an at-will employee, the employer may cut hours, cut staff, or cut an employee's wages to account for the effects of COVID-19 on business operations. As such, an employee should expect to face consequences if he or she refuses to go into work, unless the demand by the employer contradicts Stay-At-Home Orders as described herein.

However, under certain circumstances, if an employee refuses to go into work and meets any certain criteria, the employee may be entitled to certain COVID-19 unemployment benefits. A summary of the available unemployment benefits is set forth in the next section of this summary.

Please note that in certain states, such as Minnesota, employers must comply with any Stay-At-Home Orders issued. Generally, Stay-At-Home orders restrict individuals from leaving their homes for non-essential matters. Each state defines "essential services" that are exempt from the stay-in order. Thus, employees in states that have issued stay-at-home orders must stay home and not go into work, unless their job is exempted from the order and deemed an "essential service."

Stay-At-Home orders also restrict non-essential businesses from being open to the general public and requiring business travel, but do permit businesses to continue operations to the extent necessary to maintain certain critical functions, such as inventory levels, process payroll and employee benefits, maintain security, etc.

It is important for employees to also remember that the legal protections against discrimination existing before COVID-19 still apply, and as such, employers may not discriminate in the workplace against protected classes, including age, race, gender, and religion. Employees are also ensured the protection of having a safe workplace under OSHA, and as such, an employer may face liability if the office is unsanitary or unsafe.

## ***2. What Unemployment and Sick Leave Benefits are Available to Employees Whose Hours are Reduced or are Laid Off?***

### **A. The Families First Coronavirus Response Act**

On March 18, 2020, Congress passed the Families First Coronavirus Response Act ("FFCRA"), which provides Emergency Paid Sick Leave and Expands FMLA Benefits

for employees facing financial hardships amidst the COVID-19 pandemic. Of note, the FFCRA applies to businesses with less than 500 employees and all public employers. Businesses with less than 50 employees may qualify for an exemption.

### *Emergency Paid Sick Leave*

For qualifying employers, full-time employees are entitled to 80 hours of paid leave and part-time employees are entitled to the average number of hours worked over a 2-week period in the following circumstances:

1. The employee is subject to quarantine or isolation related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order for the subparagraphs 1 and 2 above.
5. The employee is caring for a child of the employee if the school or place or care for the child has been closed due to COVID-19.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Employees who meet condition 1, 2, or 3 above are entitled to Paid Sick Leave in an amount equal to their normal pay, up \$511 per day and up to \$5,1000 over the benefit period. Employees who fall within conditions 4, 5, or 6 above, are entitled to Paid Sick Leave up to two-thirds (2/3) their regular pay, up to \$200 per day and \$2,000 over the benefit period.

### *Paid FMLA Leave and FMLA Expansion*

The FMLW Expansion (Public Health Emergency Leave) adds a new category of FMLA-covered leave for “*qualifying need because of a public health emergency.*” Under the FMLA Leave Expansion, a “qualifying need” includes employees who are not working because the employee is caring for his or her child due to school or childcare closure or unavailability.

An employee who establishes a qualifying need may be eligible for up to 12 weeks of certain virus-related family medical leave at pay through the end of 2020. It is important to note that the first 10 days, however, are not paid. The employee may run

otherwise-available paid leave concurrent with the first 10 days, such as vacation days, personal leave, or unpaid time off. After 10 days, the remainder of the leave is paid at 2/3 of the employee's regular rate. The benefit paid is capped at \$200 per day and \$10,000 total per employee. To qualify, an employee must have worked for the employer for at least 30 days.

Employees in the health care industry and emergency responders may be excluded from benefits. Additionally, employers with fewer than 50 employees may claim ineligibility due to financial hardship. All such determinations are made by the Secretary of Labor.

Under the FMLA Leave Expansion, employers may receive a refundable tax credit equal to certain family leave wages paid to the employee. Additionally, self-employed individuals can obtain a refundable tax credit equal to their qualified family leave requirement.

## **B. Relief Available in Minnesota**

### *Executive Order 20-05 – Relief to Employers and Unemployed Workers During COVID-19*

Executive Order 20-05 opens up unemployment benefits to more people and waives several qualification requirements in order that people can obtain benefits faster in this time of crisis. Order 20-05 allows persons previously ineligible for unemployment benefits to now become eligible. The order provides that employee applicants are eligible for unemployment insurance if:

- They have *temporarily or permanently lost their job or had their hours reduced* because of COVID-19.
- A healthcare professional or health authority recommended or *ordered them to avoid contact with others* due to COVID-19.
- They are *barred from their workplace due to an outbreak of COVID-19*.
- They have received notifications from a *school district, daycare, or other childcare providers that either classes are canceled or their ordinary childcare is unavailable*, provided they made reasonable efforts to obtain other childcare and requested time off or other accommodation from their employer and no reasonable accommodation was available.

Thus, not only are persons laid off or furloughed eligible for unemployment benefits, but workers who are not able to work because they have been directly or indirectly

affected by COVID-19 are also eligible. The order provides that leave of absence for an employee will be presumed to be involuntary if the employee is taking leave due to any of the above-listed reasons. To alleviate any further burden on employers, the order protects employers from a tax rate increase if their employees collect unemployment benefits due to COVID-19.

The order further removes many of the barriers previously in place that inhibited certain individuals from obtaining unemployment insurance by waiving the following requirements:

- The nonpayable week requirement no longer applies. As such, workers do not need to go one week without pay to qualify for unemployment insurance. Instead, they are immediately eligible upon meeting one of the criteria for eligibility discussed above.
- The five-week benefit limitation for business owners is waived.
- While all applicants seeking unemployment benefits must actively seek “suitable employment,” workers temporarily laid off may meet this requirement.

To achieve the above relief, the order suspends Minnesota’s unemployment insurance laws from March 1, 2020 through December 31, 2020.

#### *Minnesota’s Shared Work Program*

To help employers avoid a layoff, the Shared Work Program allows employers to determine how many hours they are able to provide paid employment to their employees amidst a temporary downturn in business due to COVID-19, and then divide the available hours of work amongst a group of employees instead of simply laying off workers.

The benefit in this approach is that employees will not be laid off, and employees that sustained a reduction in hours will be eligible to receive partial unemployment benefits. The unemployment benefits paid to employees generally amounts to about one-half of the employee’s lost income due to the reduced hours. To be eligible for benefits, employees must work 50% but not more than 80% of their regular hours. Employees must also be continued on their health and pension benefits programs.

To participate in this program, employees must be full time or part time employees that have worked for the employer for at least one year. Seasonal, temporary, or intermittent workers are not eligible.

### **C. Local Benefits**

Minneapolis has a Sick and Safe Time Ordinance (Ordinance No. 2016-065, amended by Ordinance No. 2018-009) which grants employees who work at least 80 hours a year in the City of Minneapolis 1 hour of leave for every 30 hours worked within the geographic boundaries of the city, with accrual capped at 48 hours each calendar year. The Ordinance alternatively allows employers to provide 48 hours of leave after the employee's first 90 days of employment for use during the first year, and at least 80 hours of leave each subsequent year. Employers with 1-5 employees are not required to give paid leave. Employers with 6 or more employees must issue paid leave at the same rate as the employee's regular pay.

St. Paul similarly requires employees who perform at least 80 hours of work each year within the boundaries of the City of St. Paul to accrue 1 hour of paid leave for every 30 hours worked. New employers may give unpaid leave during the first 6 months after hiring an employee. As in Minneapolis, employers may provide 48 hours of leave after the employee's first 90 days of employment for use in the first year, and 80 hours of leave each subsequent year. These benefits, however, do not apply to government employees or independent contractors.

The City of Duluth enacted the Earned Sick and Safe Time Ordinance (City Code Ch. 29E), which requires employers to offer full and part-time employees who work more than 50% of the time in Duluth sick leave benefits, including either (i) 1 hour of leave for every 50 hours worked, with accrual capped at 64 hours per calendar year, or (ii) 40 hours of leave after employee's first 90 days of employment. The Leave can be used for medical care or treatment for themselves or a family member. Government employees (other than employees of the City of Duluth) are not eligible for the benefits.

### **3. *What if I Get Sick at Work?***

Apply for Workers' Compensation coverage. Additionally, seek available COVID-19 related unemployment benefits under Minnesota Executive Order 20-05, as well as federal unemployment benefits available under the Families First Coronavirus Response Act, which requires paid sick leave for some workers with the virus, or for workers who are required to stop working to care for another who has contracted the virus.

#### 4. *What Happens to My Employer-Provided Benefits?*

##### **A. Healthcare**

The Families First Coronavirus Response Act sets forth coverage changes that have important implications for employees, including the elimination of patient cost-sharing for COVID-19 testing and related services, including office visits, urgent care visits, and ER visits for diagnostic testing. These coverage changes apply to Medicare, Medicaid, self-funded groups, fully-insured groups, and individual health insurance coverage.

##### **B. Short-Term Disability**

Generally, short-term disability carriers are also providing short-term disability benefits for claims where symptoms and treatment of COVID-19 has been confirmed. Employers should follow their medical plans to determine coverage, including offerings of free testing, relief from co-pays, and elimination of deductible requirements.

Employers should also be aware of options available to address hardships in the workplace amidst any downturn due to the COVID-19 pandemic. A summary of *Workforce Reductions Resulting From the COVID-19 Pandemic*, are set forth in the following link: [Employer Guide to Workforce Reductions Resulting From COVID-19](#).

The situation with the COVID-19 virus continues to evolve on a daily basis, and with that the needs of employee continue to evolve as well. If you have any questions about how the information herein pertains to your situation please do not hesitate to **contact Jennifer Crancer of Chestnut Cambronne PA at (612) 767-3612** to discuss.

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