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FEDERAL DEVELOPMENTS AND GUIDANCE ON EMPLOYMENT ISSUES ARISING FROM COVID-19

Multiple federal agencies continue to provide guidance on employment issues arising from the impact of COVID-19. A brief summary of this most recent guidance from the U.S. Department of Labor (DOL), the Internal Revenue Service (IRS), the Occupational Safety and Health Administration (OSHA), and the Department of Homeland Security Immigration and Customs Enforcement (DHS) is set forth below.

A. Guidance on the FFCRA from the DOL and IRS

The DOL continues to update its FAQs on the Families First Coronavirus Response Act (FFCRA), which requires public employers and employers with less than 500 employees to provide additional emergency paid sick leave and emergency paid family and medical leave. The DOL's FAQs provide additional information on permissible uses of leave under the FFCRA, calculating leave amounts for employees with irregular hours, and computing an employee's average regular rate for purposes of the FFCRA. To review the DOL's current FAQs, click [here](#).

Similarly, the IRS has issued FAQs to assist eligible employers in claiming tax credits for leave under the FFCRA. The FAQs address issues such as which employers may claim the tax credits, the amount of refundable tax credits available to eligible employers, the process for claiming credits, and the allocation of qualified health plan expenses. To review the current FAQs from the IRS, click [here](#).

B. OSHA's Guidance on Anti-Retaliation and Enforcement

OSHA has released guidance on its enforcement of complaints and interim enforcement response plan relating to COVID-19. Some of the plan's key provisions include: giving actual inspection priority to employers, such as hospitals and other working health care facilities, that are taking in or likely to have COVID-19 patients; using non-formal investigation procedures for non-healthcare and non-emergency response establishments; requirements regarding employers' responsibility to report COVID-19 related fatalities; and encouraging employers to use the OSHA 3990 document to formulate a plan for their employees.

To review OSHA's guidance on its interim enforcement response plan for COVID-19, click [here](#).

Additionally, OSHA reminds employers that it is illegal to retaliate against workers because they report unsafe and unhealthful working conditions during the coronavirus pandemic. Prohibited acts of retaliation can include terminations, demotions, denials of

overtime or promotion, or reductions in pay or hours. To review OSHA's news release, click [here](#).

C. Immigration Considerations

Due to COVID-19, DHS has temporarily suspended the physical inspection of employees' Section 2 documents associated with Employment Eligibility Verification (Form I-9). However, employers must inspect the Section 2 documents remotely (e.g., over video link, fax, or email) and must obtain, inspect, and retain copies of the documents within 3 business days of the employee's date of hire for purposes of completing Section 2 of the Form I-9. For more information, click [here](#).

For H-1B employees, DOL regulations do not permit employers to stop offering the required wage even if the H-1B employee is furloughed or is not able to work from home during a COVID-19 pandemic initiated shelter-in-place order from federal, state, or municipal government authorities. Any employer seeking to convert a full-time H-1B employee to part-time must file a new Labor Condition Application (LCA) to reflect this change. Once a new LCA is certified, the employer is required to file an amended H-1B petition. The employee is permitted to commence part-time employment upon receipt of the H-1B petition by the U.S. Citizenship and Immigration Services. For more information, click [here](#).

D. DOL Guidance on the CARES Act and Unemployment Compensation Programs

With over 26 million U.S. workers filing claims for unemployment benefits since March 15, 2020, the DOL continues to provide guidance on the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), including the various unemployment compensation programs authorizing an additional \$600 weekly payment to certain eligible individuals and assistance to individuals who do not qualify for regular unemployment compensation and are unable to continue working as a result of COVID-19 (such as self-employed workers, independent contractors, and gig workers). For more information on the DOL's current guidance and news releases, click [here](#).

E. Complimentary Workplace Webinars

Finally, the Employment Law Alliance (ELA) is the world's largest network of labor and employment lawyers from around the globe. Cline Williams is honored to be the exclusive ELA member law firm for Nebraska and to extend an invitation to the ELA's complimentary webinars on topics and challenges that have come to the forefront for employers due to the coronavirus pandemic, including employee benefits, workplace safety and OSHA regulations, business interruption and civil authority insurance, landlord-tenant agreements, and bankruptcy. For more information and to register, click [here](#).

We will continue to provide updates on these issues as they evolve. In the meantime, if you have any questions arising from the impact of COVID-19, please reach out to a member of Cline Williams' Labor and Employment Law and Employee Benefits [Sections](#):



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