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DOL Issues Updated Guidance, Report on Pandemic-Related Matters

Human Resources & Employment

As employers and employees alike shift to new protocols and procedures amidst the COVID-19 global pandemic, the Department of Labor (DOL) reminded employers about their continuing responsibilities.

Tracking Hours for Teleworkers

Last week, the Department of Labor (DOL) Wage and Hour Division [issued guidance](#) on tracking teleworking hours for non-exempt employees. The Fair Labor Standards Act (FLSA) requires employers to pay for work “suffered or permitted,” even if not requested or scheduled. Work done without the knowledge of the employer may also be compensable. If an employer “knows or has reason to believe that work is being performed, the time must be counted as hours worked.” In other words, work that is allowed is work that is paid. In order to avoid wage claims (and to stay on budget), the DOL suggests that employers provide a “reasonable (written) reporting procedure for non-scheduled time.” While the guidance does not change employer’s responsibilities, it provides a reminder that remote workers, like those on-site, must be paid for time worked.

FFCRA and Schools Reopening

The DOL has also released new guidance clarifying employee rights under the Families First Coronavirus Response Act (FFCRA) as schools plan to reopen with in-person, remote learning, or a hybrid of the two. The DOL’s position is that a school is effectively “closed” on days when a child is not permitted to attend in-person learning.

Therefore, if a child’s school is operating on a hybrid in-person and distance-learning schedule, employees may take paid leave under the FFCRA only on days when the child is required to engage in remote learning. Similarly, if a child’s school begins its school year under a distance-learning only program, the parent may take FFCRA leave while there are no in-person options. As a reminder, paid leave to care for a child is only available when no other suitable person is available to do so.

Alternatively, paid leave under the FFCRA is not available where the child’s school is open to all students each day, but the parent chooses to have the child participate in a remote learning option. Per the DOL, the school is not “closed” due to COVID-19 reasons if children are permitted to attend.

OSHA Audit Report by DOL Shows “Significant” Increase in Complaints

Earlier this month, the DOL’s Office of Inspector General (OIG) released an [audit report](#) of the whistleblower complaints to the Occupational Safety and Health Administration (OSHA) during the COVID-19 pandemic. The results show OSHA experienced a “significant” increase in whistleblower complaints, all while OSHA’s Whistleblower Program has fewer full-time employees to manage the influx. Indeed, the number of complaints from February-May 2020 increased 30% over the same timeframe in 2019.

OSHA provides standards and directives for workplaces, some of which apply to COVID-19, including the Personal Protective Equipment (PPE) standards and the General Duty Clause (which requires employers to furnish employees with a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm.”) Additionally, there are 28 OSHA-approved state plans that may require different or more stringent requirements. Finally, as the agency stated in its “ [Guidance on Preparing Workplaces for COVID-19](#)”, employers should take into account CDC guidelines as they evolve. Just as before the pandemic, employers must be mindful of their obligations under OSHA and take a close look at their working environment and the

safety needs of employees based on setting, role and risk of exposure.