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D.C. Passes COVID-19 Response Supplemental Emergency Amendment Act

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On April 7, 2020, the D.C. Council passed the second piece of emergency legislation in response to issues and challenges that have arisen as the result of the coronavirus disease (COVID-19) pandemic. Among many other items, the new legislation incorporates and expands the provisions of the Emergency Act that was passed on March 17, 2020 with respect to employee eligibility for unemployment compensation and Family and Medical Leave. The new legislation also expands paid leave benefits available under the D.C. Safe and Sick Leave Act and also provides, enhanced penalties for unlawful trade practices with respect to price gouging, provides tenant protections, and provides other business-related protections and assistance during the Covid-19 emergency.

Unemployment Insurance Provisions

Under the original Emergency Amendment Act that was passed on March 17, 2020 and the Supplemental Emergency Act that was passed on April 7, 2020 (cumulatively referred to as "The Act"), eligibility for unemployment benefits was expanded to include employees who otherwise are eligible for unemployment benefits and who have become "unemployed or partially unemployed" as a result of the circumstances giving rise to the public health emergency. This includes:

1. An employee who has been quarantined or isolated by the Department of Health or any other applicable D.C. or federal agency;

2. An employee who has self-quarantined or self-isolated in a manner consistent with the recommendations or guidance of the Department of Health, any other applicable D.C. or federal agency, or a medical professional;

3. An employee of an employer that ceased or reduced operations due to an order or guidance from the mayor or the Department of Health or a reduction in business revenue resulting from the circumstances giving rise to the public health emergency, as determined by the mayor.

Under the new legislation, it is clear that employees that are furloughed due to the pandemic are entitled to unemployment compensation. The legislation clearly states that employees impacted by the Covid-19 emergency are entitled to unemployment benefits even if the employer has provided a date certain for return to work and regardless of whether the employee has a reasonable expectation of continued employment. Individuals who are self-employed, seeking part time employment, do not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under District or Federal law are included within the definition of "employed" (for purposes of eligibility for unemployment compensation benefits) under the Act during the time period that the Mayor has declared a state of emergency.

The Act allows for unemployment benefits for employees who voluntarily leave their jobs where: (a) an employer fails to timely comply with a written directive from the Mayor or the Department of Health in relation to measures to be taken to protect its employees or public during the crisis; or (b) an employer

requires an employee to be physically present at work despite the employee having (i) been quarantined by the Department of Health or any other District of Columbia or federal agency; or (ii) self-quarantining or self-isolating in a manner consistent with the recommendations of the Department of Health, or any other applicable District of Columbia or federal agency or a medical provider.

Work search requirements have been removed for affected employees. The Act also provides further assistance for those filing for unemployment insurance, and clarifies that benefits paid to affected employees pursuant to the emergency legislation will not be charged to the employer's experience rating.

Family and Medical Leave Provisions

The Act extends protections of the D.C. FMLA, which normally applies to employers with 20 or more employees. Under non-emergency circumstances, to be eligible for D.C. FMLA an employee must have worked for the employer for at least at least one year with 1,000 hours of service. The Act provides that during a period of public health emergency declared by the Mayor, these employee eligibility requirements do not apply to an employee who has been ordered or recommended to quarantine or isolate by the Department of Health, any other D.C. or federal agency, or a medical professional. Under this "declaration of emergency leave," D.C. FMLA applies to all employers, regardless of size and to all employees, regardless of tenure or hours worked.

Provision of Paid Leave Pursuant to the D.C. Sick and Safe Leave Act

The Act revises the D.C. Sick and Safe Leave Act and mandates that during the COVID-19 emergency, an employer with between 50 and 499 employees that is not a health care provider shall provide paid leave to an employee pursuant for an absence from work due to **any** of the reasons for which paid leave may be used pursuant to the federal Families First Coronavirus Response Act (FFCRA). An employer may require an employee to exhaust all benefits available under federal, D.C. or employer policies prior to use of additional leave under the Act. The Act clearly states: "Nothing in this section shall be construed to require an employer to provide an employee with paid leave pursuant to this section for more than 2 full weeks of work, up to 80 hours." Under the Act, this paid leave benefit is available to any employee who commenced work for the employer at least 15 days before the request for leave is made.

This provision of the Act appears to be intended to ensure that employees in the District who qualify for paid leave under the FFCRA (which provides reduced pay in some circumstances and caps the amount of available paid leave benefits) receive full pay for a two week (80 hour) period (or pro-rated amount for part-time employees). However, as currently drafted, the Act is subject to multiple interpretations, and could construed to require the provision of paid leave benefits over and above leave benefits already provided for pursuant to an employer's policy and/or required under federal and D.C. law.
Taking this into consideration, the recommended approach for employers is to properly code leave time as FFCRA so it can be tracked in their system to ensure proper credit is applied.

Given the newness and ambiguities of both the FCCRA and the D.C. COVID-19 Response Supplemental Emergency Amendment Act, it is impossible to predict with any certainty how the laws will be interpreted, how the laws will interact or how the laws will be applied in any given circumstance. Employers should keep apprised of all developments as they occur and should consult with counsel to determine the best way to navigate these laws as they continue to evolve.

Links to the March 17, 2020 COVID-19 Response Emergency Amendment Act and April 7, 2020 COVID-19 Response Supplemental Emergency Amendment Act are included below:

March 17, 2020 COVID-19 Response Emergency Amendment Act
April 7, 2020 COVID-19 Response Supplemental Emergency Amendment Act