



Oregon Employers and the COVID-19 Pandemic

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Today's Agenda

- **Paid Leave**
 - FFCRA
 - Oregon Paid / Sick Leave
- **Oregon “Stay Home, Save Lives” Order**
- **Layoffs and Furloughs**
 - WARN Act
 - Oregon Final Paycheck Laws
 - Unemployment (Oregon and CARES Act)
- **CARES Act**
 - Loans
 - Benefit Distributions
- **Final Questions**

FFCRA

- Signed into law March 18, 2020, effective as of April 1, 2020 until December 31, 2020
- Applies to employers with less than 500 employees, with exclusions for healthcare providers and employers with less than 50 employees
- Two distinct but related paid leave entitlements, fully reimburseable through a tax credit:
 - 80 hours of **Emergency Paid Sick Leave** for full time employees who fall into one of 6 defined categories
 - 1) If the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
 - 2) If the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - 3) If the employee is experiencing symptoms of COVID-19 and seeking medical diagnosis;
 - 4) If the employee is caring for an individual who is subject to (1) or (2), above;
 - 5) If the employee is caring for a son or daughter due to a COVID-19-related school or care center closure;
 - 6) If the employee is experiencing a “substantially similar condition” as defined by the Health and Human Services Secretary.
 - 12 weeks of **Emergency Family Medical Leave** for qualifying employees to care for their children due to COVID-19 related closures

FFCRA Q&A



- What type of notice regarding FFCRA must an employer provide?
- Emergency Paid Sick
 - What is considered a “quarantine”?
 - What is considered a “substantially similar condition”?
- Emergency Family Leave
 - Son or daughter – of any age?
 - How do I know they really need it?

FFCRA Q&A cont'd



- Are the leaves fully paid? If not, how do I determine rate of pay?
- Can the two leaves overlap?
- Exclusions:
 - Who is covered by the Healthcare Provider exclusions?
 - Are all businesses with less than 50 employees excluded? From all leaves?
 - If a business that is excluded provides the leave, does it still get the tax credit?

Oregon Paid and Sick Leave

- Employees May Use Accrued Paid Sick Leave for Covered Absences
 - Including time where the employee is sick
 - Including time where the employee's close family member is sick
- BOLI Temporary Rule – Sick Leave
 - COVID-19-related absences are covered absences
 - Child's school closure
 - Caring for a sick roommate
 - Does not cover workers who are fearful of catching the virus at work



Oregon Leave Q&A



- How does COVID-19 change my ability to ask an employee for a doctor's note regarding a non-COVID-19 condition?
- If my restaurant changed work schedules due to COVID-19, are employees entitled to premium pay under the Oregon predictive scheduling law?
- BOLI Guidance – Predictive Scheduling
 - Business closures to comply with the Governor's "Stay Home, Save Lives" Order do not require premium pay
 - Nonbinding guidance (does not have force of law)

Federal WARN Act

Requires written notice to employees sixty days before reduction in force (RIF)

- Applies to employers with 100 or more employees
- Applies to a layoff exceeding six months
- Notice to the Oregon dislocated worker unit and local government official

Federal WARN Act Q&A

Sixty days ago, my business was doing great. How could I comply with the WARN Act's sixty-day requirement?

There are exceptions allowing notice of fewer than sixty days:

- Faltering company exception
- Unforeseeable business circumstances exception
- Natural disaster exception
- Reminder: the employer bears the burden to prove that the conditions for the exceptions have been met

Oregon Final Paycheck Laws

- Pre-COVID-19 statutes still apply
- ORS 652.140(1)
 - Employer discharges employee
 - Wages earned and unpaid become due and payable
 - Not later than the end of the first business day after the discharge
- ORS 652.150
 - 652.150(1) – Penalty wages for up to 30 days at 8 hours per day
 - 652.150(5) – Employer “may avoid liability” for penalty by “showing financial inability to pay the wages or compensation at the time the wages or compensation accrued”



Oregon “Stay Home, Save Lives” Order

Imposes Social Distancing

- Non-essential social / recreational gatherings prohibited
- Unless individuals maintain distance of six feet
- Criminal penalty of a Class C misdemeanor

Closes Certain Businesses

- List of certain prohibited businesses
- Restaurants and bars may offer takeout delivery
- Other retail businesses required to establish, implement, and enforce social distancing policies

Imposes Workplace Restrictions

- All businesses and facilities must telework to the “maximum extent possible”
- If telework is impossible, must designate an employee or officer to establish and enforce social distancing

Unemployment (Oregon UI Benefits)

- Workers are eligible for UI benefits if they are **laid-off, quit, or fail to accept an offer** of work because of a “COVID-19 related situation” (as defined in OAR 471-030-0070)
- Workers are eligible for UI benefits for a **temporary layoff** if (1) they remain in contact with their regular employer; (2) they are capable of accepting and reporting for suitable work with their regular employer; (3) there is a reasonable expectation that they will be returning to work for their regular employer
 - Only available for 4 weeks
- Workers are eligible for **partial UI benefits** if (1) they were working full time; (2) they now work less than customary full time hours; (3) they earn less than their weekly UI benefit would be; (4) they expect to return to work full time

Oregon UI Q&A



- Do temporarily laid-off employees have to search for other work in order to receive UI benefits?
- When are employees considered “able to work” vs. “unable to work” as required to obtain UI benefits?
- What are the eligibility requirements for OR’s Workshare program?
- What are the pros and cons of having employees participate in the OR Workshare program vs. applying for partial UI in light of new federal UI benefits (CARES)?

Unemployment (CARES)

- States must voluntarily implement the programs into their existing UI systems
- Provides three federal programs related to unemployment insurance (“UI”) benefits:
 - (1) **Emergency increase in UI compensation** - \$600 / week increase in benefits paid through July 31, 2020
 - (2) **Pandemic Emergency UI compensation** - 13 weeks of additional federally-funded UI benefits for workers who have exhausted existing state UI benefits, through December 31, 2020
 - States must relax active work search requirements if claimant (a) has COVID-19; (b) is quarantined; or (c) is subject to mandatory movement restrictions
 - (3) **Pandemic Unemployment Assistance program** - Federally-funded emergency unemployment assistance for workers otherwise ineligible for UI benefits if claimant is able to self-certify that s/he is able to work but cannot due to being impacted by COVID-19 in one of 11 enumerated ways

CARES UI Q&A



- What are the 11 different grounds an unemployed worker can establish in order to receive benefits under CARES' Emergency Unemployment Assistance program for workers traditionally ineligible for workers compensation benefits?
- Are recipients of partial unemployment benefits entitled to the \$600-per-week additional benefit under CARES?

CARES



How do I calculate the amount of my loan?

- Total payroll costs for the 12 months before date of loan
- Subtract compensation paid in excess of \$100,000
- Divide that total by 12
- Multiply by 2.5
- Add outstanding amount of an EIDL made between Jan 31, 2020 and April 3, 2020, less the amount of any advance

CARES cont'd

- Is the entire amount of my loan forgivable? **Maybe**
- Potential to forgive all the principal and interest
 - 75% or more of the loan forgiveness amount must be for payroll costs
- Must maintain **FTE** and **Salary**
 - FTE: Divide the average number of monthly employees in the 12 months before loan application by the number of employees employed during the period Feb 15, 2019-June 30,2019 OR Jan 1, 2020-Feb 29, 2020
 - Salary: Can't go down more than 25% for those earning under \$100K

CARES cont'd

Are there any other benefits under CARES besides PPP?

- Economic Injury Disaster Loans
- Loans for larger businesses (501-10,000 employees)

CARES – Other Provisions

- Distributions from Retirement Plans without the 10% penalty tax, up to \$100K
- Allows OTC to be reimbursed with an HSA, HFSA, or HRA
- Health Plans must cover COVID-19 diagnostic testing
- ***Employee Retention Payroll Tax Credit*** (may not use both PPP and ERPTC)
- If shut down or gross receipts down by 50 percent or more, may be *eligible for a 50 percent refundable payroll tax credit on the first \$10,000 of qualified wages and health benefits paid to each employee between March 13, 2020, and December 31, 2020. The size of the tax credit depends on the size of the employer's workforce.*
 - For employers with over 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above
 - Cannot do both tax credit and PPP

Final Questions



Thank you



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General Q&A from Submitted Questions



- How does FFCRA / State leave overlap?
 - How do I manage employees who won't come to work because they don't feel safe?
 - How do I manage employees who have COVID or symptoms of same
- Compliance with Governor Brown's order (as compared to other states)
- How does WARN apply
- Unemployment Benefits
- CARES
 - Loans and loan forgiveness
 - Benefit distributions