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# Navigating Employment Issues During the COVID -19 Outbreak

Hosted By Schwabe, Williamson & Wyatt, P.C. + Aldrich CPAs + Advisors

- Carrie leads our Manufacturing group at Aldrich and specializes in serving large and middle market companies, primarily in the consumer and industrial products sectors. Carrie has exclusively practiced in tax since beginning her career in 1998. Her background is rich in experience with multi-state operations, transactions, cross-border taxation and ongoing tax consulting and compliance.
- Carrie received her degree from Washington State University and remains active with the AICPA and OSCPA.



Carrie Sowders, CPA

Partner

503-620-4489 Direct

[csowders@aldrichadvisors.com](mailto:csowders@aldrichadvisors.com)

- Jennifer Campbell leads a firm wide team of attorneys focused on serving Washington and Oregon manufacturing, distribution and retail companies. She is committed to learning her clients' businesses and industries in order to understand and appreciate legal issues from their perspective. This allows her to deliver tailored, client -focused advice and creative litigation strategies that help her clients solve problems.



Jennifer Campbell

Shareholder

206-689-3052 Direct

[jcampbell@schwabe.com](mailto:jcampbell@schwabe.com)

- Jean Back brings more than 25 years of experience in helping manufacturers and technology - focused employers solve problems to complicated employment scenarios. She has broad expertise in litigation, mediation and settlement of employment and business tort claims. She is fluent in all areas of state and federal employment, wage and hour, discrimination, and leave laws. She is skilled at training managers and employees in employment compliance.



Jean Back

Shareholder

503-796-2960 Direct

[jback@schwabe.com](mailto:jback@schwabe.com)

- Both states have declared states of emergency
- Shelter in place
- Restricted list of closures for Oregon
- Essential businesses for WA  
<https://www.governor.wa.gov/sites/default/files/WA%20Essential%20Critical%20Infrastructure%20Workers%20%28Final%29.pdf>
- Social Distancing
- Mandating that businesses that are able to telework do so
- Where telework is not possible (like in manufacturing establishments), businesses must designate a social distancing czar and develop social distancing policies

- Avoid close contact; social distancing –6 feet for 10 min. or more
- Evaluate common spaces, e.g., locker rooms and time clocks
- What to do about common tools?
- Shift change risks
- Meals and snacks
- Streamline monitoring activities
- Office clerical work
- Other considerations (sanitation and other topics )?

- Expanded FMLA leave
- Paid sick leave
- Additional funding for Unemployment
- Tax credits

- For the single purpose that an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID -19.
- Provides for 12 weeks of FMLA leave.
- The first two weeks are unpaid, and the remaining 10 weeks are paid at 2/3 of the employee's salary .



- Regular FMLA leave still exists
- The total regular and expanded FMLA leave is only for 12 weeks. If you have an employee who already used their 12 weeks of FMLA leave, they do not get a new 12 weeks.
  - Example: One of our employees already used 6 weeks of FMLA Leave. Is that employee entitled to 12 weeks of leave under the EFMLEA?
  - A: No. The EFMLEA simply adds new eligibility criteria to the old law. Thus, because the employee has already taken 6 weeks of FMLA, the employee is only entitled to an additional 6 weeks of total leave under either the EFMLEA or the FMLA.

## Provides for Paid Sick Leave

If the employee is unable to work (or unable to telework) due to a need for leave because the employee:

1. is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

- Two weeks (up to 80 hours) of paid sick leave at the employee's **regular rate of pay** where the employee is unable to work for sick leave reasons (1), (2) & (3)
- Two weeks (up to 80 hours) of paid sick leave at **two-thirds the employee's regular rate of pay** because the employee is unable to work because of a bona fide need under (4), (5) & (6)

- The expanded FMLA leave is 10 days of unpaid leave, and 10 weeks of paid leave, but Congress drafted the sick leave and FMLA leave to work together to provide an employee with 12 weeks of paid leave:
- Two weeks of sick leave at 2/3 pay to stay home with children whose school is closed down, and
- 10 weeks of paid FMLA at 2/3 pay for the same reason .

- **For leave reasons (1), (2), or (3):** employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2 -week period).
- **For leave reasons (4) or (6):** employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2 -week period).
- **For leave reason (5):** employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12 -week period).

- Employee Notice - Where leave is foreseeable, an employee should provide notice of leave to the employer as is practicable. After the first workday of paid sick time, an employer may require employees to follow reasonable notice procedures in order to continue receiving paid sick time.
- Employer Notice - <https://www.dol.gov/general/topics/posters>

- Posting Notice: Each covered employer must post a notice in a conspicuous place on its premises. An employer may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.
- You do not have to post in other languages.
- Notices apply only to current employees, so if you have laid employees off prior to April 1, you do not have to provide them with notice.
- You are not required to share notice with new job applicants.

- [OARD Temporary Rule Filing - OAR 839 -009 -0230 .](#)
- The Oregon Family Leave Act (OFLA) provides for time off to care for a sick child for an illness, injury, or condition that is not serious, and as included explicitly in this temporary rule, for school closures by order of a public health official for a public emergency even if the individual child is not sick.
- This OFLA leave does not entitle eligible employees to additional leave beyond the 12 week FMLA leave.



- The Washington Paid Sick Leave Act (WPSL) does not include as a reason to stay home to care for a child whose school is closed due to a public health emergency, so there is no overlap with the Emergency FMLA.
- WPSL and the EPSL do overlap. The reality is that employees will be paid under the federal EPSL and will not be eligible for the WPSL for those weeks, but if they continue to be sick with their own serious health condition or have to care for a family member under the WA law, then they will be eligible for the WA sick leave.

- Covered employers qualify for dollar -for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA.
- Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps .
- Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage. For more information, please see the Department of the Treasury's website .

- Complete coverage
- Employers receive 100% reimbursement for paid leave pursuant to the Act.
  - Health insurance costs are also included in the credit.
  - Employers face no payroll tax liability.
  - Self-employed individuals receive an equivalent credit .

- Under guidance that will be released this week, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.
- The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.
- If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able to file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. The details of this new, expedited procedure will be announced next week.

### Examples

- If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.
- If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.
- Equivalent child care leave and sick leave credit amounts are available to self-employed individuals under similar circumstances. These credits will be claimed on their income tax return and will reduce estimated tax payments. -

### Permanent Layoff

- Pay final wages by the next business day
- Pay accrued but unused PTO, vacation, and sick leave according to policy
- Provide COBRA notice (some insurers are granting a 90-day period of continuing coverage on the health plan before requiring COBRA continuation coverage)

### Temporary Layoff (35 days or less)

- Safest to pay final wages the next business day (OR), next pay period ( WA)
- Employees may use PTO during unemployment waiting period
- Employees will retain insurance eligibility (probably –check your plan )

- Available for hourly employees – must convert salaried employees to hourly
- Benefit estimator available on workshare web page
- Example of how it works:
  - Jim's employer reduces Jim's hours by 20%, meaning Jim now works 4 days a week and earns \$400 in wages from his employer. He would also earn Work Share benefits of \$55, 20% of the \$275 weekly Unemployment Insurance benefit he would have been eligible for.

- BOLI stated that the COVID -19 crisis was creating a critical demand for “ non - perishable products that are necessary for the preservation of life and property”
- Temporary rule “will allow for the necessary increase in production of critical non -perishable goods during this statewide public health emergency and global pandemic .”



- Allows employers to request that workers work in excess of 55 hours in any workweek during the emergency exemption period.
- Employer must provide BOLI with a notice of the emergency situation and obtain written consent from each employee asked to work in excess of 55 hours in any workweek during the emergency exemption period .

# Questions?

Aldrich COVID - 19 Resources : <https://aldrichadvisors.com/coronavirus/>

Schwabe COVID - 19 Resources: [https:// www.schwabe.com/covid](https://www.schwabe.com/covid) - 19



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# Next Virtual Manufacturing Roundtable

CARE Act and SBA Loans for Manufacturers

- April 9