DOL SETTLEMENT WITH EMPLOYER REQUIRING PAYMENT OF BACK PAY FOR VIOLATING EMERGENCY PAID SICK LEAVE ACT PROVISIONS IS REMINDER THAT CORONAVIRUS DIAGNOSIS IS NOT PREREQUISITE FOR PAID SICK LEAVE

As federal, state and local governments began passing a slew of new rules and regulations in response to COVID-19, employers almost immediately found themselves attempting to navigate uncharted waters in an effort to avoid noncompliance with these newly enacted laws. A recent investigation by the U.S. Department of Labor ("DOL") brings a little more clarity for employers regarding Emergency Paid Sick Leave Act ("EPSLA") compliance.

After receiving an employee's complaint and investigating a claim of denied leave under the EPSLA, the DOL noted the employer (Discount Tire Centers) violated the EPSLA when it refused to provide paid sick leave to the employee who was advised by his health care provider to self-quarantine while he awaited the test results of a family member recently tested for coronavirus. The employer mistakenly believed that the employee was required to submit proof of a positive coronavirus test to qualify for paid leave under the EPSLA. As a result of the investigation, the employer agreed to pay the employee's full wages for the leave period denied and to comply with the Families First Coronavirus Response Act ("FFCRA"), which includes the EPSLA.[1] The DOL news release is available here.

Under the EPSLA, an employee is entitled to up to 80 hours of paid sick leave if the employee is unable to work due to:

- Quarantine or self-isolation (pursuant to federal, state or local government order or the advice of a health care provider);
- Seeking a medical diagnosis due to experiencing COVID-19 symptoms;
- A bona fide need to care for an individual subject to quarantine;
- Care for a minor child whose school or child care provider is closed or unavailable due to COVID-19; or
- Is experiencing any other substantially-similar conditions specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Employers in violation of the EPSLA will be subject to the penalties described in Sections 16 and 17 of the Fair Labor Standards Act. This includes back pay and potentially an equal amount of liquidated damages. Importantly, the EPSLA is effective through December 31, 2020. Therefore, it is vitally important for employers to be cognizant of these new rules under the FFCRA to ensure compliance through the end of 2020.

PRACTICAL TAKEAWAYS

- Remember the purpose of the FFCRA is to enable employers to keep employees on their payrolls, while at the same time ensuring workers are not required to sacrifice their own health, or the health of others in the workplace, for a paycheck.
- A confirmed coronavirus diagnosis is not required to grant employees leave under the FFCRA.

If you have questions about these issues or would like to be updated on any further developments, please don't hesitate to contact:

- Larry Jensen at (248) 457-7850 or ljensen@hallrender.com;
- Jake Kolisek at (317) 977-1428 or jkolisek@hallrender.com; or
- Your regular Hall Render attorney.

Hall Render's attorneys and professionals continue to maintain the most up-to-date information and resources at our COVID-19 Resource page, through our 24/7 COVID-19 Hotline at (317) 429-3900 or by contacting your regular Hall Render attorney.

Hall Render blog posts and articles are intended for informational purposes only. For ethical reasons, Hall Render attorneys cannot—outside

THIS IS AN ADVERTISEMENT
© 2002-2024. Hall, Render, Killian, Heath & Lyman, P.C. All Rights Reserved.

of an attorney-client relationship—answer specific questions that would be legal advice.

[references]

[1] The EPSLA section of the FFCRA applies to private employers with fewer than 500 employees as well as certain public employers.

[/references]

THIS IS AN ADVERTISEMENT
© 2002-2024. Hall, Render, Killian, Heath & Lyman, P.C. All Rights Reserved.