

CURTIS THAXTER

Some New Changes In Employment Law That Might Affect Current Camp Employees

As everyone is trying to navigate through this challenging time, we recognize that you are likely trying to make decisions involving a range of issues relating to the employment relationship, including leaves of absence under the law, mandatory sick leave, wage and hour issues from scaled-back hours, insurance continuation following a termination of employment or reduction in hours, and unemployment compensation, all with an eye on the fast-moving changes in these areas at the state and federal level as you make difficult decisions in the workplace.

IMPORTANT REMINDER: This information is being provided for your general educational purposes only. You should always consult your attorney or other advisors for advice on how the law applies to specifics at your camp.

Paid Sick Leave. The new paid sick leave law, like the expansion of the federal FMLA, is intended to apply to employers with less than 500 employees. It will provide up to 80 hours (2 weeks) of paid leave for full-time workers, for absences related to the Coronavirus, e.g. the employee has been quarantined because of the virus, has been told by a doctor or the government to self-quarantine, is experiencing symptoms and seeking testing for the virus, is caring for someone else in quarantine or self-quarantine, or if the employee is caring for a child whose school or daycare has closed or whose paid child care provider is unavailable because of the virus. The payment is intended to be at the employee's regular rate of pay, but it will be capped at \$511 per day for employees in quarantine, self-quarantine, or experiencing symptoms and seeking a diagnosis. For employees taking care of others with the virus or children as result of school or daycare closures, the employee may receive 2/3 of the regular rate of pay, but the payment is capped at \$200 per day. Unlike the expansion of the FMLA below, there is no requirement that the employee have worked for the employer for at least 30 days. The new Emergency Paid Sick Act gives the Department of Labor authority to enact regulations allowing employers the ability to exclude health care workers and emergency responders from this provision, as well as the expanded FMLA provision below. The new law also gives the Department of Labor the authority to exempt businesses with less than 50 employees if the imposition of paid sick leave would threaten the business. It is important to note that if an employer already provides paid leave to employees (i.e., vacation, sick days, PTO), the employer cannot mandate that employees first use other employer-provided paid leave for absences due to the Coronavirus before using the new emergency paid sick leave. An employee may elect to first use the emergency two-week sick leave for absences due to the Coronavirus before using any other leave.

Here is a link to the new law: <https://www.govinfo.gov/link/bills/116/hr/6201?link-type=pdf>. See Division E, page 18, for the new Emergency Paid Sick Leave Act.

Expanded FMLA. The emergency FMLA expansion introduces a paid leave element into a law that otherwise provides for unpaid leave. Again, this new law applies to employers with

less than 500 employees. Furthermore, this new law only pertains to employees who have been employed by the employer for at least 30 days, who are losing childcare because of school or day care closures or because the employee's paid childcare provider is unavailable as a result of the virus. The paid leave element kicks in after the first two weeks (i.e., 10 days) of unpaid leave. After the first 10 days of unpaid leave, the employee shall provide paid leave for each subsequent day an employee is absent as a result of losing childcare because of the virus. Employees are to receive 2/3 the regular rate of pay, but the payment is capped at a maximum of \$200 per day, and \$10,000 total. The emergency FMLA expansion gives the Department of Labor authority to enact regulations allowing employers the ability to exclude health care workers and emergency responders from this provision. The new law also gives the Department of Labor the authority to exempt businesses with less than 50 employees if the imposition of expanded FMLA would threaten the business. It is important to note that an employee may elect to substitute any accrued paid vacation, personal, or sick leave for the two weeks unpaid emergency leave.

Here is a link to the expanded FMLA law:

<https://www.govinfo.gov/link/bills/116/hr/6201?link-type=pdf>. See Division C, page 12, for the new Emergency Family and Medical Leave Expansion Act.

COBRA health insurance continuation. The current legislation does not affect COBRA obligations (which pertain to companies with 20 or more employees). Remember that if your employee is laid off, or resigns, or has their hours reduced from full time to part time (among other triggering events), the employee may be entitled to continuation of their employer's group health care plan (along with certain other plans), generally for a period of up to 18 months (with some variation). The employee generally pays for the continuation of the coverage. Remember that it is the employer's obligation to provide the notification to the employee of their rights to elect COBRA. Be sure to coordinate with your plan administrator on the notification. Maine has a so-called "mini COBRA law" that pertains to employers with less than 20 employees. It provides continuation coverage for one year rather than 18 months, and it's triggered by fewer events (e.g. temporary layoffs, or injuries/diseases covered under workers compensation).

Here is a link to the State program:

https://www.maine.gov/pfr/insurance/faq/cobra_faqs.html.

Obligations upon layoff. If you are contemplating a layoff of any employees, remember that Maine law requires that, unless your policies expressly say otherwise, employees are entitled to be paid their accrued and unused vacation time. There is no obligation to pay accrued and unused sick leave. For employers with a PTO policy in lieu of the traditional vacation and sick leave division, the Department of Labor will generally treat it similarly to accrued vacation leave, so plan on paying accrued and unused PTO upon termination upon an employee's separation from employment, unless your policies expressly say otherwise.

Changes and expansions in unemployment compensation. The Coronavirus issue has led to expansions in the availability of unemployment compensation so if you need to close or partially shut down as a result of this emergency, your employees can likely obtain

unemployment benefits paid out of the State's general fund. For the duration of the current state of emergency plus 30 days, claims for unemployment will not be charged against the experience rating record of employers when employees are dislocated or temporarily laid off as a result of the COVID-19 state of emergency. The normal one-week waiting period of total or partial unemployment is also waived so your employees can begin to obtain unemployment benefits immediately. The eligibility requirements for employees have also changed. Now your employees are eligible for unemployment compensation if they are (a) under a temporary quarantine or isolation restriction to ensure that they have not been affected by COVID-19 and are expected to return to work; or (b) temporarily laid off due to a partial or full closure of the place of employment as a result of the state of emergency and are expected to return to work once the emergency closure is lifted. In addition, employees are not disqualified from receiving benefits if they take a temporary leave of absence due to a medical quarantine or isolation restriction, a demonstrated risk of infection/exposure, or a need to care for a dependent family member as a result of COVID-19, so long as they maintain contact with you as the employer. The amount of compensation available to employees has not changed; the Department of Labor will still calculate the weekly benefit amount for employees based on their earnings during a set period prior to the unemployment, not to exceed \$445 per week. If you need to reduce hours, employees can receive some unemployment compensation if they qualify as partially unemployed (working less than 35 hours per week and not earning more than their weekly benefit amount plus \$5).

In addition, the new federal CARES Act provides \$600 per week – in addition to the state unemployment – to certain employees receiving state unemployment benefits. Under this expansion, individuals who ordinarily would qualify for unemployment compensation benefits under Maine law are entitled to both: (1) the regular amount of compensation available under Maine's system, as well as (2) an additional flat-fee amount of \$600 per week called "Federal Pandemic Unemployment Compensation." Like the emergency state unemployment benefits, it is not charged to the employer's unemployment insurance account.

The State's FAQs on the COVID-19 unemployment benefits can be found here <https://www.maine.gov/labor/docs/2020/covid19/covidfaqandui.pdf>

and a summary of the available unemployment options are here <https://www.maine.gov/unemployment/docs/2020/Unemployment%20Programs%20COVID19%202020-03-30.pdf>

I hope you find this helpful. As I'm sure you can appreciate (and as I'm duty-bound to tell you again), this summary is not to be considered legal advice, as legal advice must take into account your particular camp's circumstances.