**Partner Business Weekly Conference Call**

**March 25, 2020**

Meredith Rozanski with the chamber kicked off the call introducing Ian Loos with Bell, Orr, Ayers & Moore. Ian, who is impacted by the new Families First Coronavirus Response Act?

Ian Loos – this act was signed into law last Wednesday night by the President. It covers a lot of topics such as additional SNAP benefits, unemployment benefits, payment for testing for COVID-19, etc. But as for employers it relates to emergency paid sick leave for employers with fewer than 500 employees and public agencies. Also, an expansion of public health FMLA leave to businesses with fewer than 500 employees. Even if you aren’t covered by traditional FMLA, you may be covered by this new act.

Caller – have applications come out for sick leave benefits?

Ian – there are no instructions or application out yet. They may put out one, but a specific application isn’t required. It provides for up to 80 hours for FT and as many hours as a PT employee would work for 2 weeks to be paid time off if an employee is under quarantine by government or medical professional, if they are experiencing coronavirus symptoms whether confirmed yet or not, or if they are caring for a child or family member with the virus. If they are unable to work, they will still be paid under those circumstances.

Caller said he created an application and would be willing to share that.

Ian said he created a worksheet that an employer or workplace could use regarding what questions to ask, etc. It outlines who is entitled to what. There are differences in what pay they are entitled to, if it is because they are quarantined or have symptoms, they get their full rate of pay, not to exceed $511 per day. If they are entitled to the leave because they are caring for someone else or they cannot work because their child is off school, etc. they are entitled to 2/3 of their normal rate of pay, not to exceed $200 per day.

Meredith - Send resources you want to share to info@bgchamber.com and we will share those out on our website.

Ian – Employers cannot require their employees to use their existing sick leave or vacation time before using this emergency sick leave. Qualified employees can use emergency sick leave even if they have accrued sick or vacation time they could use. Employees also cannot be required to find someone to cover their shift for them. The employee that doesn’t use this paid time off is not eligible for a payout later. It doesn’t roll over at the end of the year. The provisions of this new act expire 12/31/2020.

Caller – Are there regulations for hardship for people for childcare?

Ian – In the act there is express authorization that allows the Dept of Labor to issue regulation to exclude businesses with fewer than 50 employees from coverage under this act if the requirements would detrimental to their business and would jeopardize the viability of the business. The Department of Labor is also authorized to exclude healthcare providers and emergency responders from coverage under this act. We expect more regulations from Dept of Labor by the end of April.

Caller – The calls for emergency responders doesn’t include utility workers does it?

Ian – Department of Labor may issue regulations to exclude healthcare providers and emergency responders from coverage with this act. My thought is that I wouldn’t imagine that utility companies would be excluded. They are essential to infrastructure, but likely wouldn’t fall within the future Dept of Labor regulations excluding emergency responders from coverage under the act.

Caller – Do the 80 hours of emergency paid leave have to be taken all at one time?

Ian – Nothing in the law states that it has to be. But as a practical matter, I would expect that it probably would be taken at once. Perhaps if a husband and wife work and rotate days, etc. That would be an instance I can see that it wouldn’t be taken all at one time. It seems like that would be beneficial for a business.

Caller – If a person is out and want the FMLA expansion for childcare, is it okay to ask for verification that the childcare provider is closed?

Ian – There is nothing in this regulation that requires that, but it wouldn’t be impermissible for you to ask. But the Governor has required all daycares to be shut down. So, unless they have a babysitter or something, they would be closed.

Ian – Here is a quick rundown of expanded FMLA – applies to all employers with fewer than 500 employees even if you aren’t subject to traditional FMLA. The Dept of Labor can exclude certain businesses if the viability would be jeopardized by complying. Anyone who can’t work due to childcare or school being closed are entitled to 12 weeks of leave. The first 10 working days are unpaid, but they can use the emergency paid sick leave or other accrued leave to cover those 10 days. Then after the remaining 10 weeks they get paid 2/3 the normal rate of pay not to exceed $200/day or $10,000 total. Depends on how many hours they would have normally worked per week during that period.

Ian – If your business is subject to traditional FMLA they may be entitled to unpaid FMLA if they are diagnosed with the virus.

Caller – The amount of pay with FMLA minimum wage addressed if the 2/3 pay goes below min wage?

Ian – No, the minimum wage wouldn’t be a limit on the 2/3 amount. Employees taking expanded FMLA leave under this section can be paid less than minimum wage during their leave under this provision if they not working.

Caller – I have an employee taking care of father after heart surgery on regular FMLA. He is wondering if any of these new legislations apply to him to take advantage of.

Ian – Nothing under this act would entitle him to anything beyond traditional FMLA. That being said, if his doctor says, due to coronavirus, the employee has to stay home more, or is unable to work beyond what is normally required to assist in recovery from heart surgery, he would be entitled to the 80 hours of emergency paid leave at the 2/3 pay rate.

Caller – Is the expanded FMLA only for childcare?

Ian – 100% yes. It is for people unable to work due to a child’s school or day care being closed.

Caller – Are there going to be any minutes published from this conference call? I can’t hear very good on this call.

Ian – The chamber is taking notes.

Meredith – Ian will check our notes to ensure accuracy and we will publish them on our website.

Ian – Feel free to reach out to me directly. There is a summary of the law on BOAM’s website as well. [www.boamlaw.com](http://www.boamlaw.com) then look under the Press Release tab.

Caller – You said you have a worksheet or checklist we can use?

Ian – Yes, I prepared a worksheet to guide employers through what questions to ask to determine what the employee may be entitled to. Reach out to me after this call, and I will be glad to share that. My email is loos@boamlaw.com. Our firm doesn’t specialize just in this law, we have a whole employment services area. We have been helping a number of employers regarding this law and other concerns as well.

Meredith – go to [www.bgchambercovid.com](http://www.bgchambercovid.com) and look under “Legal” and you will find Ian’s contact information and additional business resources.

Ian – that was prepared before it went into law, so I can get you a more updated version to post. And one more thing to add, this act doesn’t go into effect until not later than 15 days after enacted. If you have employees itching to take this leave, I don’t think you would be wrong to start doing it now. Also, you could wait until April 2 to start offering. The Labor Law has a new posted under this new act that employers are required to post. He will send a copy of that to Meredith to post and it is also available on the Dept of Labor’s website.

\***NOTE—After this conference call, the Department of Labor indicated the effective date of the Families First Coronavirus Response Act is April 1, 2020.**

Caller – If an employee reports to manager symptoms of being sick, a person can start on their 80 hours of leave. Can we request a statement from their doctor to affirm?

Ian – Leave is required if the employee is experiencing symptoms and awaiting a diagnosis. However, if they get a diagnosis back, and it is not coronavirus and they are not required to quarantine, they are no longer eligible for any further emergency sick leave with regard to that condition. If a person has symptoms and is sent home and then go to the doctor and get tested, they are eligible while they are awaiting diagnosis.

Caller – Are we able to request that diagnosis from them to ensure they are clear to come back and work and also to verify that they were indeed positive.

Ian – It’s not expressly laid out in the legislation, but you do have to be able to determine if they are eligible for the sick pay. Our firm has been preparing coronavirus policies for employers that lay out what to do if you have symptoms, details about self-quarantining, etc.

Caller – What if healthcare professionals refuse to test the employee for the virus?

Ian – It’s not addressed in the legislation specifically. My advice, if they exhibit fever, dry cough, chest tightness and are seeking a diagnosis, they are still covered whether they get the test or not. If they have symptoms that align with the CDC guidance for symptoms and have sought diagnosis, they are covered whether they get a test or not. Unless a doctor confirms they do NOT have it.

Caller – This also does provide protection for their position if they seek this, correct?

Ian – That is correct. Just like traditional FMLA, they are entitled to the 12-week leave paid at the 2/3 rate and their job back after that. If their position no longer exists, the employer has to attempt to find them suitable similar employment. But given the fluidity of the situation, there are circumstances in which if that job isn’t there, they may not have a job to come back to. If that happens, though, you should definitely speak to an attorney. This act does include traditional non-retaliation protections for employees under this as well.

Caller – would you give us contact info again?

Ian – 270-781-8111 or loos@boamlaw.com

Meredith – We do have these calls every M/W. Monday we will have Ann Puckett with BKD, LLP speaking about extended local, state and federal tax deadlines. Please feel free to share this call information with fellow businesses.