

Employment and HR in a Pandemic World

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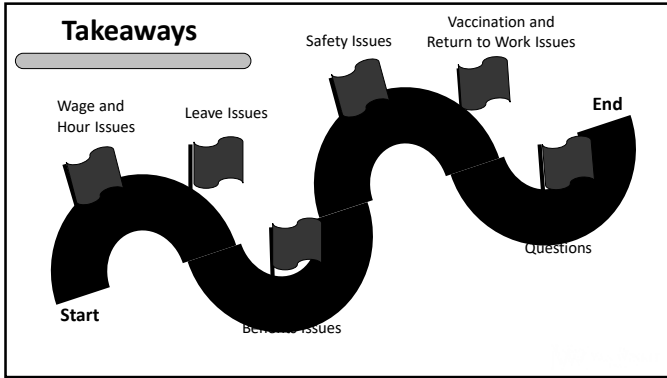
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COVID-19 Employment Issues



- | | |
|----------------------------|---|
| FLSA | Sick Employees |
| FFCRA, CCA, ARPA | OSHA |
| Paid Sick Leave / E-FMLA | NLRA |
| Deferred Compensation | Discrimination |
| COBRA | FAQs |
| Flexible Spending Accounts | CARES Act; PPP Loan; Furlough; Unemployment Issues; Workers |
| Managing Employees | Compensation, etc. |

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Fair Labor Standards Act (FLSA)

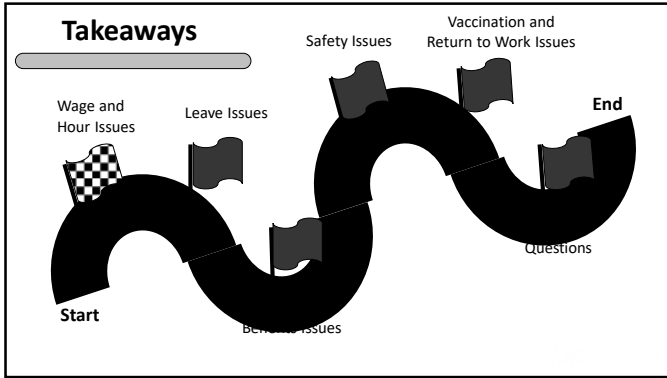
- Are exempt employees still exempt, or have roles changed due to remote work?
- How are you tracking time worked?
- Have you communicated when employees should and should not be working?

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Managing Employees During COVID-19

- Establish clear communication plan (both down & up the ladder)
- Schedule regular equipment/workspace/capability check-ins
- Revisit job descriptions, if needed
- Set productivity expectations – reiterate & clarify as necessary
- Be careful what you ask

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FFCRA vs. ARPA

- **Mandatory* v. permissive**
 - Families First Coronavirus Response Act expired 12/31/20;
 - Consolidated Appropriations Act expired 3/31/21; and
 - American Rescue Plan Act of 2021 went into effect 4/1/21 and expires 9/30/21.
- Under ARPA, discrimination in favor of HCEs, FT employees, or on basis of employment tenure is prohibited (result = no payroll tax credits).

*There were certain exceptions, but PSL and E-FMLA were generally mandatory under FFCRA.

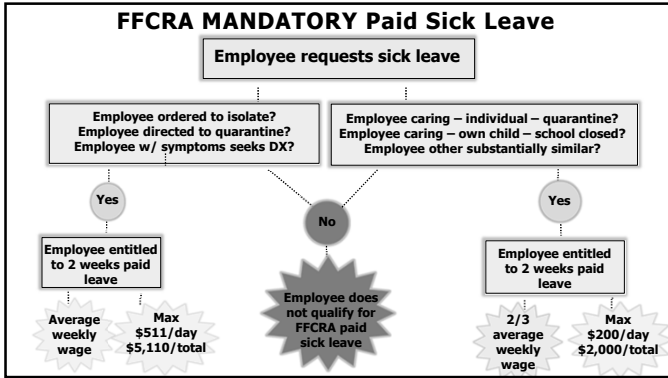
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Paid Sick Leave - FFCRA

- **Required under the FFCRA – now expired:**
- 2 weeks (80 hours max)
- Every employer < 500 employees
- Every employee
- Addition to existing PTO
- Immediate use

* Voluntary continuation under the CCA (now expired) and ARPA.

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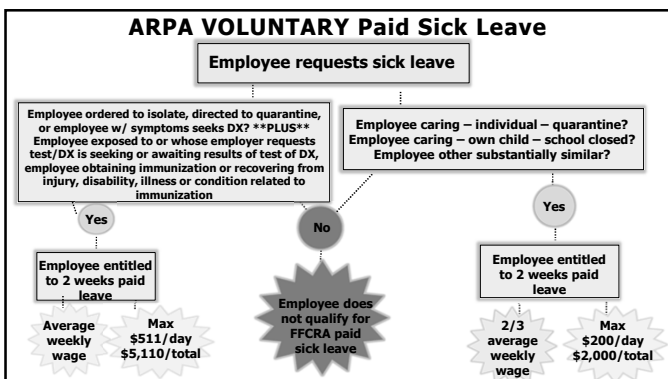


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Paid Sick Leave - ARPA

- Voluntary continuation under the ARPA:
- 2 weeks (80 hours max) *can be new!
- Every employer < 500 employees
- Every employee
- Addition to existing PTO
- Immediate use
- *Extended reasons

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E-FMLA

FFCRA:

Only applies to closed school or childcare.
Up to 12 weeks.
The first 2 unpaid. Then next 10 paid at 2/3. \$10k cap.

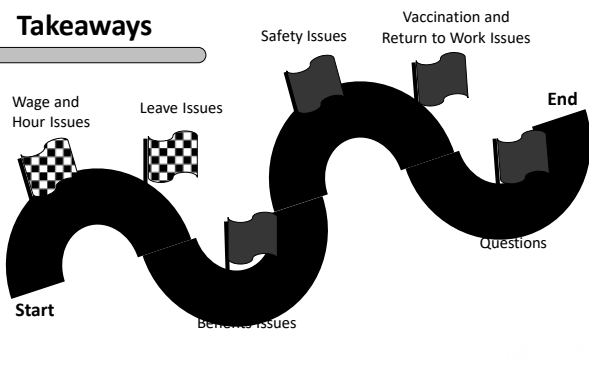


ARPA:

Same reasons as Paid Sick Leave.
Up to 12 weeks.
The first 2 paid up to \$200/day. Then next 10 paid at 2/3. \$12k cap.

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Takeaways



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Deferred Compensation Considerations

- Did you delay payment of bonus/deferred compensation or pay less than was promised?
 - IRC 457(f)
 - Breach of contract
- Did you allow withdrawals from NQDC plans for an "unforeseeable emergency"?
 - Higher bar than 401(k) plan

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COBRA Considerations

- Certain deadlines were tolled during the “outbreak period” – IRS/DOL clarified earlier of one year from *individual* deadline or 60 days after announced end of COVID-19 national emergency
 - COBRA, but also claims
- 100% COBRA subsidy 4/1/21 – 9/30/21 for individuals who lost group health insurance due to an involuntary termination or reduction in hours
 - Refundable FICA tax credit to employer
- Covers all qualified beneficiaries within last 18 months (new 60-day election period/notice – did not elect or dropped)

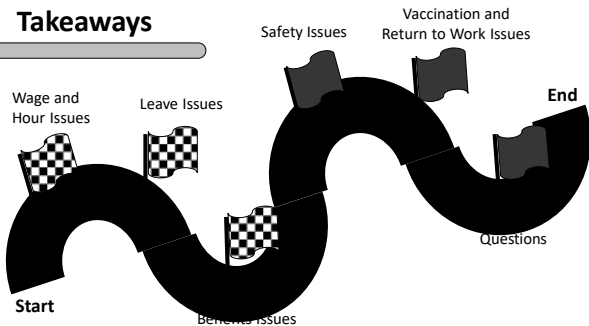
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Flexible Spending Account Considerations

- The Consolidated Appropriations Act provides temporary relief for health and dependent care FSAs:
 - 100% of unused balances at end of 2020 and 2021 plan years may be carried over under both types of FSAs;
 - Grace periods for plan years ending in 2020 and 2021 may be extended 12 months (rather than 2 ½);
 - Certain prospective mid-year elections are permitted; and
 - Reimbursement of health expenses post-termination of employment is permitted through the end of the 2020 or 2021 plan year, as applicable.
- ARPA raises the maximum dependent care FSA contribution to \$10,500 (\$5,250 for married, filing separately) for 2021.

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Takeaways



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Safety Issues



- Vaccinations
- Masks
- Social Distancing
- OSHA
- NLRB

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Step 1 = Planning



- You are not Walmart/Amazon/Target/ Bank of America or Mission Hospital
- Do not just do what others are doing
- Involve employees in planning
- Avoid “blanket rules”

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Step 2 = Clearly State the Policy



- Policies are not Hallmark cards
- If you can't clearly state your policy – then you need to start over – vague policies are not policies
- Policies are not secrets - post it conspicuously – paper and electronic

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Step 3 = Training



- Policies are not absorbed by osmosis
- Training is not a negotiation
- Negotiations and compromises are part of the planning process

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Step 4 = Supervision and Enforcement



- Supervisors who don't supervise and enforce ... shouldn't be supervisors
- Your supervisors are YOU - their actions write checks that YOU must cash

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Occupational Safety and Health Administration



Provide a safe working environment for employees?

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Regulations – Blessing or Curse

- Too much regulation



- Not enough regulation



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OSHA and Masks

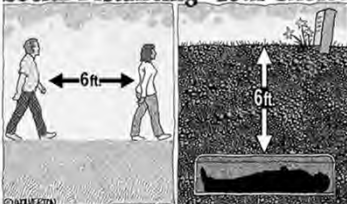
- OSHA = protect the wearer
 - Duty to supply and fit test
- CDC = protect those around the wearer
- BYOM is allowed but use common sense



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CDC and Social Distancing

Social Distancing—Your Choice



- Recommendations vary based on extent workforce is vaccinated
- Recommendations will change
- Can treat vaccinated and unvaccinated differently with respect to virus control measures

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National Labor Relations Act



- Cannot take adverse action for engaging in protected concerted activity
 - Refusing to work based upon a “good faith” belief that the work environment is unsafe

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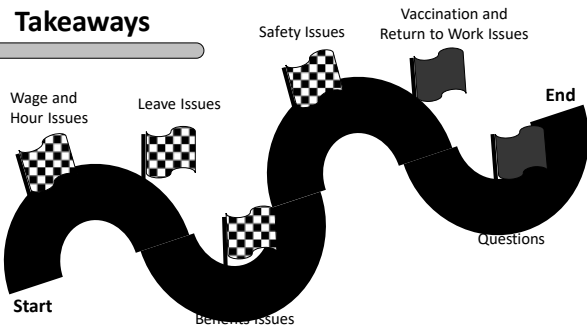
Sick Employees



- Can tell employees if a coworker diagnosed – w/o specifics
- Can ask an employee if sick - symptoms (fever, cough, tiredness, and shortness of breath) must maintain confidential
- Can take employee temp (but not all temps mean COVID-19)
- Can send sick employee home if symptoms
- Can require fitness to RTW
- Can withdraw job offer if diagnosed

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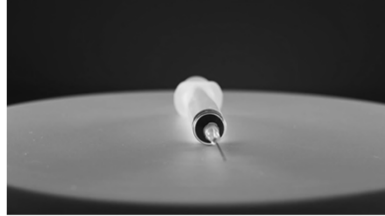
Takeaways



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Vaccination and RTW Issues

- Mandatory vaccination policies
- North Carolina is not like every other state
- You have options and flexibility
- This area is in flux – watch for changes



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Discrimination Considerations

Disability and religious accommodations



Unfairness and favoritism can be in the eye of the beholder



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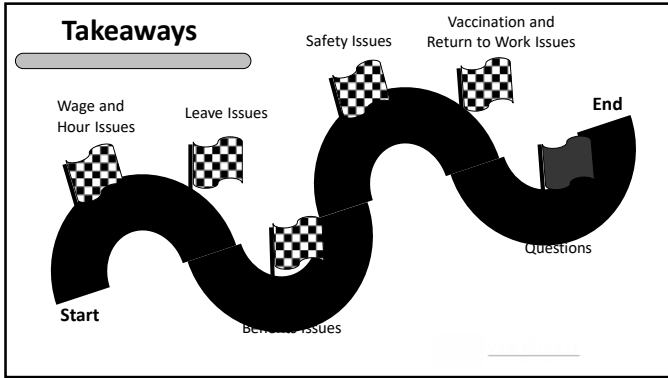
Religious Accommodation

Reasonably accommodate employee's religious beliefs or practices

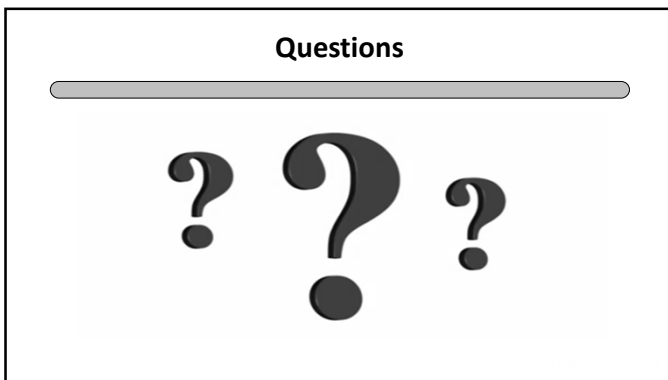
- Unless undue difficulty / expense
- Allowing voluntary shift swaps to attend religious services



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FAQ #1

• If you think a coworker has COVID-19, who do you tell and are you protected (whistleblower)?

Suggest employee self-report - tell supervisor – go up chain

Might still be allowed to work if asymptomatic

Retaliation is prohibited – whistleblower is a specific status but public policy would be an issue

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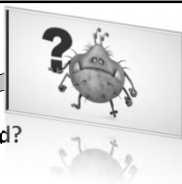
FAQ #2



- Can employees still work remotely – and do you have to let them?
- Can they – sure if you agree to allow
- Do you have to allow – only if it's an accommodation and the request is not unreasonable or unduly burdensome

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FAQ #3



- Can you require employees to be vaccinated?
- So.....you've been eating hotdogs and McChickens all your life, but don't want the vaccine, because, " you don't know what's in it"?**
- In NC and in general, yes. Accommodations may be necessary for disability and religious issues

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FAQ #4




- Can you incentivize employees to be vaccinated?
- Absolutely – very smart approach



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FAQ #5



- Can you require proof of vaccinations?
- Yes – if you require vaccinations

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FAQ #6



- What do you do with the health information you receive?
- You must protect it and treat it the way you would treat other employee health information

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Q&A



- If we end up with a CV19 W/C claim – or a take home case – can that trigger a worker’s comp claim ?
- Yes. Absent gross (intentional) negligence, the employee’s sole remedy is W/C. But a take home case is not limited to W/C – but causation would be an issue.

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Other Questions?

HELP!

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Takeaways

The graphic shows a winding road starting from the bottom left and ending at the top right. Checkered flags are placed at several points along the road. Labels are placed near these flags: 'Start' at the beginning, 'Wage and Hour Issues', 'Leave Issues', 'Benefits Issues', 'Safety Issues', 'Vaccination and Return to Work Issues', 'Questions', and 'End' at the finish line.

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