

March 26, 2020

EMPLOYMENT PRACTICES & BENEFITS: COVID-19 CHALLENGES – KEY DEVELOPMENTS

Dear Valued JAH Clients,

We continue to monitor rapidly changing developments surrounding COVID-19 so we can help our clients to navigate through the maze of employment laws, both new and old, as they deal with a host of unprecedented challenges. These include understanding the implications of: 1) the Families First Coronavirus Response Act (FFCRA), 2) the anticipated \$2T Congressional stimulus package, including payments to individuals and small businesses, and the possibility of enhanced unemployment benefits for employees who are furloughed or terminated, 3) NC changes to employee benefits, and other unemployment laws, 4) “Shelter in Place” Orders, and 5) how these recent developments relate to existing laws and obligations.

Here are some key developments you should keep in mind:

1. The Senate unanimously approved a \$2T stimulus bill; it has not been approved by the House, but we expect the House will pass the bill as currently written Friday morning. **A current summary of the package can be found [\[HERE\]](#).**
2. The FFCRA goes into effect on April 1, 2020 for all businesses with less than 500 employees. Depending upon the critical needs of your business, it may make sense to consider taking actions (terminations, furloughs, pay reductions, schedule reductions, requiring employees to use PTO, etc.) before then.
3. Employers with less than 50 employees should assume they must comply with the FFCRA until there is guidance on how to obtain an exemption. Even then, it may make sense for such employers not to seek exemption.
4. Employers with less than 50 employees must keep in mind that they are still subject to their own policies as well as laws that may impact their employment decisions, including discrimination laws such as Title VII (race, sex, religion, national origin, etc.), ADEA (age), and ADA (disability).
5. The FFCRA requires “posting” of notice to all employees of their rights under the FFCRA. **A sample notice can be found [\[HERE\]](#).**
6. The Mecklenburg County Shelter in Place order requires that non-essential businesses be closed until at least April 16. As of this writing, we are seeing other North Carolina counties,

including Cabarrus and Guilford Counties, entering similar orders of their own. Businesses need to ensure that they are in compliance. Consider giving essential employees an authorization letter from the Company in case they are stopped traveling to and from work. **A sample authorization letter for Mecklenburg County can be found [\[HERE\]](#).**

7. Employers considering whether to terminate or furlough employees should also consider the effect of such decisions on eligibility for the company's group health plans. Continued eligibility is possible for employees on leave, but is subject to the eligibility provisions in your plan document that may require amendment. Additionally, health insurance carrier contracts and stop-loss policies may have notice requirements that apply when plan terms regarding eligibility are changed. A failure to amend your plan if needed, or to notice your carrier, may have negative coverage implications.

Please know that your friends at JAH and the Employment Practices and Benefits Group are on standby to assist you through this crisis. If you have any questions, feel free to email me or call me at 704-998-2245 or 704-778-8009 day or night.

Stay well,

Pat
Chair, JAH Employment Practices and Benefits Group