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MEMORANDUM

FROM: Jeffrey Goss

DATE: March 20, 2020

RE: COVID-19: Changes to Family Medical Leave, Paid Leave, and Unemployment Insurance
Impacts to Employers and Employees in a Government-ordered Shut Down

In response to the public health threat posed by COVID-19 the governments of the United States of America and State of North Carolina are working to pass legislation and sign executive orders to mitigate the public health crisis and combat the economic damage. This Memorandum is intended to provide information to employers and employees regarding *changes* to paid leave and unemployment benefits—it is not intended to be a synopsis of all laws governing employer-employee relationships. Federal and state laws are rapidly changing and will continue to evolve. The information contained herein is valid as of March 20, 2020.

If I have to close my business, how long must I continue to pay my employees?

This has not changed. All employers must pay all non-exempt employees at least the minimum wage for all hours worked and time and one-half overtime pay for all hours worked in excess of 40 in a workweek. Unless the employer has a written policy or practice which results in forfeiture, employees shall be paid for all earned vacation pay, commissions, and bonuses on the first regular payday after the amount becomes calculable when a separation occurs. The North Carolina Department of Labor takes the position that sick leave does not have to be paid at termination.

Many restaurants, bars, and retail stores are laying off employees as people are instructed to self-quarantine at home and refrain from mass gatherings. Employees whose employment is discontinued for any reason (including being “fired” or “laid off”) are entitled to all separation pay outlined above. Final payment to separated employees should be paid either through the regular pay channels or by mail if requested by the employee.

Example: Employer closes its retail store and lays off all employees effective at 5:00 p.m. on Monday, March 30, 2020. The Employer’s next regularly scheduled payroll (for the time period running March 21 – April 3, 2020) is on Friday, April 3, 2020. Employee Jane worked 48 hours during the pay period and has earned 56 hours of vacation leave and 24 hours of sick leave. Employee Jane should be paid at her regular pay rate for 104 hours (48 hours worked + 56 hours vacation leave) on April 3, 2020.

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What happens if I layoff all my employees? Will they qualify for unemployment benefits?

If the employee is not receiving payment from the employer, such as paid sick leave or paid time off, the employee may be eligible for unemployment benefits. Employees who are still being paid by their employer are likely not eligible for unemployment benefits.

Any person who is laid off work temporarily or their hours are reduced due to a business slowdown as a result of COVID-19 may be able to receive unemployment benefits. Employees must apply for benefits by applying online at des.nc.gov. Governor Cooper's Executive Order No. 118 waives the normal one-week waiting period and actively seeking work requirements for benefits. If an employee is temporarily out of work or working reduced hours due to COVID-19, they should select one of those two separation reasons when filing a claim for unemployment benefits.

What are the unemployment requirements for employers?

If you are the most recent employer of an individual who has applied for benefits, you have 10 days from the time of the claim to respond to a Request for Separation Information by signing into the Division of Employment Security's website to provide separation information. You should respond as quickly as possible to ensure prompt and accurate payment of benefits.

When responding to requests for separation information, you should indicate that the separation was due to COVID-19. The Department of Commerce Division of Employment Security has been directed to not allocate charges to employers' accounts for individuals who are paid benefits for reasons related to COVID-19.

What if my business is still open, but I have an employee who is sick, under self-quarantine, or must stay home to care for a child whose school is closed?

Under the Emergency Paid Sick Leave Act, employers are required to pay sick leave to each employee who is unable to work (or telework) due to a need for leave because:

- (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- (4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
- (5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
- (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

The amount of paid sick time to be paid for full-time employees is 80 hours and, for part-time employees, a number of hours equal to the number of hours that such employee works, on average, over a 2-week period. How much the employee is to be paid while on leave depends on the type of paid leave used by the employee. The maximum is \$511 per day and \$5,110 in the aggregate for paid sick leave described in paragraphs (1), (2), or (3); and, \$200 per day and \$2,000 in the aggregate for paid sick leave described in paragraphs (4), (5), and (6). Employers will be reimbursed, in the form of a credit against quarterly payroll taxes, an amount equal to 100 percent of the qualified sick leave wages paid by the employer.

What about changes to the Family Medical Leave Act?

The Emergency Family and Medical Leave Expansion Act requires employers with less than 500 employees to provide paid public health emergency leave needed to care for a child under 18 years of age whose school or place of care has been closed or if the child care provider is unavailable due to a public health emergency with respect to COVID-19 declared by a Federal, State or local authority. The Department of Labor has authority to issue regulations to exempt small businesses with fewer than 50 employees from this requirement.

Under the Emergency Family and Medical Leave Expansion Act, an employer is required, after 10 days of leave, to pay an employee who is eligible for leave under the Act, an amount not less than two-thirds of an employee's regular rate of pay for the number of hours the employee would otherwise be normally scheduled to work. An employee may take a maximum of 12 weeks of paid leave under the Act. The maximum paid leave is \$200 per day and \$10,000 in aggregate. Employers will be reimbursed, in the form of a credit against quarterly payroll taxes, an amount equal to 100 percent of the qualified family and medical leave wages paid by the employer.

Where can I find additional information?

[H.R.6201 – Families First Coronavirus Response Act, 116th Congress \(2019-2020\) Limiting Operations of Restaurants and Bars and Broadening Unemployment Insurance Benefits in Response to COVID-19, NC Governor, Executive Order No. 118, March 17, 2020](#)

[Who Qualifies for Paid Leave Under the New Coronavirus Law, The New York Times, Claire Cain Miller, March 19, 2020](#)

[Trump Signs Coronavirus Relief Bill with Paid-Leave Mandate, SHRM, Lisa Nagele-Piazza, J.D., SHRM-SCP, March 18, 2020](#)

[Paid sick leave: Who gets it during the coronavirus outbreak, The Washington Post, Heather Long, March 17, 2020](#)

[Unemployment Insurance Changes Due to COVID-19 \(Coronavirus\), North Carolina Department of Commerce, Division of Employment Security](#)

[Employers: Unemployment Requirements, North Carolina Department of Commerce, Division of Employment Security](#)

[You Lost Your Job in NC Because of the Coronavirus. What Should You Do Now? WFAE 90.7, Nick De La Canal, March 18, 2020](#)

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