COVID-19 Employment Law Update: Paid Sick and Family Leave vs. Unemployment Insurance Benefits

Client Alert

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The COVID-19 pandemic is having a significant impact on employers, many of whom are grappling with hard decisions regarding reducing their workforce for various reasons. The following guidance provides an overview of paid sick and family leave options vs. unemployment insurance benefits options.

Under certain existing New Jersey State laws, and the new federal Families First Coronavirus Response Act, a compliment of **paid sick and family leave** options are available for employees affected by Covid-19. Covid-19 related situations when an employee may be eligible for paid sick and family leave include when the employee:

- has been diagnosed with COVID-19
- is unable to work because of school or daycare closures
- has been exposed to COVID-19 or is quarantined
- is out of work because their employer was ordered closed
- won't work because an employer stays open in defiance of public health urgings to close
- wants to observe self-distancing and refuses to go to work
- is immune-compromised and advised by their doctor to self-quarantine
- is caring for a family member with COVID-19

There are also situations when **unemployment insurance benefits** are available, either as an alternative to sick and family leave, or when the employee does not qualify for sick and family leave. Those situations include when the employee:

- is out of work because the employer voluntarily closes
- is out of work because the employer was ordered closed

- has less or no work hours available to him/her due to a business slow down or lack of demand

For those employees who fall within the unemployment insurance benefits category, The Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), enacted on March 18, 2020 as part of the federal Families First Coronavirus Response Act, provides for an infusion of federal money to states to increase available funds for unemployment insurance claims.

Under EUISAA, a state must require employers to provide a "separated" employee with notification of the availability of unemployment benefits. EUISAA also calls upon states to demonstrate the steps they are taking or will take to ease eligibility requirements and access to unemployment benefits for claimants. These steps can include waiving work search requirements and the waiting week, and non-charging employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.

Employers facing tough decisions as to how to financially survive the COVID-19 pandemic should consider all available personnel options and educate their employees as to available leave and benefits options if a reduction in employees is unavoidable.

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