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**Pandemic Aftershocks for
Employment | Continuous
Series**
Highlight Topic: FFCRA

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What We Will Cover:

The Families First Coronavirus Response Act



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FFCRA – Employers Covered by the Act

- FFCRA
 - Provides for paid emergency sick leave, and paid emergency FMLA, for specific grounds related to the COVID emergency
 - Only covers employers with fewer than 500 employees
 - Employee count is required *each* time an employee requests leave
 - Effective on April 1, 2020

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Who Is Included In The Count

- Included:
 - Full time employees
 - Part time employees
 - Temporary employees
 - Jointly-employed employees
 - Day laborers employed by a staffing agency if there is an ongoing employment relationship
- Exclude: Independent contractors under the FLSA

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Employer Typically Defined by "Entity"

- DOL has stated an employer will typically be defined by entity
- Very large corporate families could have certain entities that are subject to the law

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Exceptions to the Standard Rule

- FLSA Joint-Employer Test
- FMLA Integrated-Employer Test

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FLSA Joint Employer Test

- FLSA: Fair Labor Standards Act
- Federal wage-and-hour law
- Joint employer status under the FLSA is typically used to determine joint and several liability for wage-and-hour violations
- The DOL adopted an FLSA Joint Employer Rule on March 16, 2020

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FLSA Joint Employer: 4 Part Test

- Factor based test:
 1. Hires or fires the employee;
 2. Supervises and controls the employee's work schedules or conditions of employment to a substantial degree;
 3. Determines the employee's rate and method of payment; and
 4. Maintains the employee's employment records.

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FLSA Joint Employer Standard

- Maintenance of employment records is not sufficient to establish FLSA joint employer status
- Control must be actual, not potential control
 - Contractual right of control is not sufficient
- Business model is not a factor
 - i.e., franchisor-franchisee

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FMLA Integrated-Employer Test

- Factor based test:
 - interrelation of operations;
 - centralized control of labor relations;
 - common management; and
 - common ownership or financial control.

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FMLA Integrated Employer Test

- No single factor is dispositive
- Most important factor: centralized control of labor relations (HR)
- Least important factor: common ownership

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Relevant Facts

- Same HR Department
- Same Employee Handbook
- Same Managers & Supervisors
- Same Executive Leadership
- Combined Purchases
- Combined Budgets
- Shared Equipment

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“Regular Rate” under the FFCRA

- FFCRA regular rate is the average of the employee’s regular rate over a period of up to six months prior to the date on which you take leaves
- Two methods to calculate:
 - Add all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period; or
 - Average weekly regular rate of pay for prior six months
 - Non-discretionary bonuses, commissions, tips and piece rates are included in the regular rate

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Thank You
For questions or comments, please contact:

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