Centricity Solutions Newsletter March 2021

Compliance Reminder

State Disability Insurance Tax and Maximum Weekly Benefit Increase

The California Employment Development Department (EDD) has announced that the 2021 employee contribution rate for State Disability Insurance (SDI) will increase to 1.2%. The taxable wage base from which the contributions will be taken will increase from $122,909 to $128,298 and the maximum cost to an employee will be $1,539.58.

SDI provides disability and Paid Family Leave (PFL) benefits equal to 60% or 70%* of the employee's base period earnings. For 2021, the maximum weekly benefit will increase from $1,300 to $1,357.

SDI will provide disability and PFL benefits equal to 70% for employees with an annual income less than ~$5,993 (1/3 of the State Average Quarterly Wage).

Employers Prepare to Return to the Office Post-Pandemic

Nearly a year after the Covid-19 pandemic closed most offices, we're beginning to see reasons for optimism. The population of vaccinated people is growing, and the number of new cases is declining from winter peaks. By mid-summer, a good portion of the working-age population should be vaccinated.

Because of such hopeful signs, companies that remain all-remote are starting to think seriously about how and how much to bring their employees back to the office, and how to best address questions about policies and timelines their employees and customers will soon ask.

Under the COVID-19 Emergency Temporary Standards, employers not covered by Cal/OSHA's Aerosol Transmissible Diseases standard, are required to:

- Implement a site-specific written COVID-19 Prevention Plan to address COVID-10 health hazards, correct unsafe or unhealthy conditions (i.e. safe physical distancing, modifying the workplace, etc.).
- Provide and ensure workers wear face coverings to prevent exposure in the workplace.
- Provide effective training and instructions to employees on how COVID-19 is spread, infection prevention techniques, and information relating to COVID-19 related benefits that affected employees may be entitled to under applicable federal, state, or local laws. (More on training requirements are linked here:
  - Cal/OSHA provides webinars on COVID-19 Regulations and Best Practices for business

  - Cal/OSHA also provides COVID-19 Training for California Workers and Employers (Please note that completion of this training, alone, does not constitute compliance with an employer's legal obligations to comply with safety and health requirements under California law. The training courses are designed to be used as part of an employer's safety program and are not complete trainings on their own. For training to be effective, employers must train their workers on information and procedures specific to their own workplaces.)
  - Our training portal currently offers a course related to COVID that will meet majority of state and local training requirements and is available at $10/per participant.
- Offer COVID-19 testing at no cost to employees during their working hours who had potential COVID-19 exposure in the workplace and provide them with information on benefits.
- Notify local public health departments within 48 hours when there are multiple COVID-19 infections or outbreaks (3 or more in a 14-day period and/or 20 or more cases within a 30-day period) in the worksite.
- Maintain a record of and track all COVID-19 cases, while ensuring medical information remains confidential.

The Department of Industrial Relations also provides resources through their Employer Portal to find local COVID-19 guidance for your business/industry. You simply answer a few questions about your business type(s), county of operation and current COVID-19 practices to generate a road map of information for your business to ensure safe and compliant operations and/or reopening.

Department of Industrial Relations (2021, March) COVID-19 Emergency Temporary Standards Frequently Asked Questions. Retrieved from https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html

American Rescue Plan Act Signed into Law: What Does it Mean for Employers?

The American Rescue Plan Act (ARPA), which is the latest bill to address the ongoing economic impacts of COVID-19, has been signed into law. Most aspects of the law do not directly affect the HR function, but those that do are outlined below.

Optional Extension of Sick and Family Leaves
Part of ARPA is an extension of the current tax credit scheme for Emergency Paid Sick Leave (EPSL) and Emergency Family and Medical Leave (EFMLA) under the Families First Coronavirus Response Act (FFCRA). The FFCRA required many employers to provide EPSL and EFMLA in 2020 but became optional when it was previously extended to cover January 1 through March 31, 2021.

The new extension under ARPA takes effect April 1, 2021 and lasts through September 30, 2021. Like the current version, it remains *optional*. In addition, tax credits are available but only to employers with fewer than 500 employees and up to certain caps. To receive the tax credit, employers are required to follow the original provisions of the FFCRA. For example, they can't deny EPSL or EFMLA to an employee if they're otherwise eligible, can't terminate them for taking EPSL or EFMLA, and have to continue their health insurance during these leaves.

Emergency Paid Sick Leave (EPSL) Changes
Here are the key changes to EPSL, in effect from April 1 through September 30, 2021:

- Employees can take EPSL to get the COVID vaccine and to recover from any related side effects.
- Employees can take EPSL when seeking or waiting for a COVID-19 diagnosis or test result if they've been exposed to COVID-19 or if the employer has asked them to get a diagnosis or test. (Previously, time spent waiting on test results was not necessarily covered, which seemed like an oversight.)
- Employees will be eligible for a new bank of leave on April 1. Full-time employees are entitled to 80 hours while part-time employees are entitled to a prorated amount.
- Employers can't provide EPSL in a manner that favors highly compensated employees or full-time employees or that discriminates based on how long employees have worked for the employer. (Be aware that any inconsistencies in the granting of leave could potentially lead to a discrimination claim.)

Emergency Family and Medical Leave (EFMLA) Changes
Here are the key changes to EFMLA, in effect from April 1 through September 30, 2021:

- EFMLA can now be used for *any EPSL reason*, in addition to the original childcare reasons. This includes the two new EPSL reasons noted above.
- The 10-day unpaid waiting period has been eliminated.
- The cap on the reimbursable tax credit for EFMLA has been increased to $12,000 (from $10,000). This applies to all EFMLA taken by an employee, beginning April 1, 2020. This change accounts for the additional 10 days of paid time off—the daily cap of $200 remains the same.
- The law isn't clear as to whether employees are entitled to a new 12-week bank of EFMLA. We anticipate that the IRS, DOL, or both will provide guidance on this question soon. It is possible that an employee will be entitled to additional *unpaid* protected time off, even if they already received the maximum reimbursable amount during previous EFMLA leave(s). We will update our materials if and when new information is available.
- Employers can't provide EFMLA in a manner that favors highly compensated employees or full-time employees or that is based on how long employees have worked for the employer. (Again, be aware that any inconsistencies in the granting of leave could potentially lead to a discrimination claim.)

Reasons for Using EPSL and EFMLA
Starting on April 1, employees can take EPSL or EFMLA for the same set of reasons, which is a useful simplification. The following are acceptable reasons for taking these leaves:

1. When quarantined or isolated subject to federal, state, or local quarantine or isolation order
2. When advised by a health care provider to self-quarantine because of COVID-19
3. When the employee is:
   - Experiencing symptoms of COVID-19 and seeking a medical diagnosis
   - Seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 because they have been exposed or because their employer has requested the test or diagnosis
   - Obtaining a COVID-19 vaccination or recovering from any injury, disability, illness, or condition related to the vaccination
4. When caring for another person who is isolating or quarantining on government or doctor's orders
5. When caring for a child whose school or place of care is closed due to COVID-19

Employees and employers will—in most cases—want to exhaust EPSL first, since it has a higher tax credit, except when used to care for others.

Please contact your Centricity Team if you have questions or concerns about opting in to the FFCRA extension. We can also provide you with forms to assist in the facilitation of FFCRA leave. Additional information regarding provisions under the ARPA is available on the next page.

ThinkHR. (2021, March). American Rescue Plan Act Signed into Law. Retrieved from https://www.thinkhr.com/blog/american-rescue-plan-act-signed-into-law/

Tax Credit Review and COBRA Subsidies under the ARPA

Tax Credit Review
The tax credits available between April 1 and September 30 are the same as under the original FFCRA, except for the increased aggregate cap for EFMLA. Tax credits are available as described below, regardless of how much EPSL or EFMLA an employee used prior to April 1.

- The credit available for EPSL when used for reasons 1, 2, or 3 (self-care) is up to 100% of an employee's regular pay, with a limit of $511 per day.
- The credit available for EPSL when used for reasons 4 or 5 (care for another) is up to 2/3 of an employee's regular rate of pay, with a limit of $200 per day.
- The credit available for EFMLA for any reason is up to 2/3 of an employee's regular pay, with a limit of $200 per day and a cap of $12,000 per employee.
- Employers can also claim a credit for their share of Medicare tax on the employee's wages and the cost of maintaining the employee's health insurance (qualified health plan expenses) during their absence.

COBRA Subsidies
Another important aspect of the law employers should understand is the creation of COBRA subsidies.

Employees and families enrolled in the employer's group health plans may lose coverage if the employee's work hours are reduced or employment is terminated. They can elect to continue coverage under COBRA, but the high premium cost can make it difficult to afford this coverage. ARPA provides a 100% COBRA subsidy if the employee's work reduction or termination was involuntary. The subsidy applies for up to six months of coverage from April 2021 through September 2021 (unless the individual's maximum COBRA period expires earlier).

For group plans subject to the federal COBRA rules, the employer will be required to pay the COBRA premium but then will be reimbursed through a refundable payroll tax credit. Employers with fewer than 20 workers usually are exempt from the federal COBRA rules, but their group medical insurance plans may be subject to a state's mini-COBRA law. In that case, it appears the subsidy will be administered by the carrier. The carrier will pay the premium and then be reimbursed by the government. Employers will need to work with their group health plan carriers and vendors on how to administer the new subsidy provision. Although it takes effect April 1, 2021, employees who were terminated earlier but are still in their COBRA election window also are included. Federal guidance is expected to be released by April 10, including model notices that plans can tailor for their use.

Note that the COBRA subsidy doesn't apply during FFCRA leaves because employees are entitled to maintain their health insurance during those leaves on the same terms as though they had continued to work. We are continuing to monitor developments and will keep you updated as information becomes available.

California Passes Supplemental Paid Sick Leave Law

California has passed a Supplemental Paid Sick Leave law (SPSL) that provides up to 80 hours of COVID-related sick leave for employees in both the public and private sector. The law applies to all California employees who work for employers with more than 25 employees, regardless of location, and covers leaves taken between January 1, 2021 and September 30, 2021. The law took effect immediately on March 19 but had a 10-day grace period. Employers will need to begin granting SPSL, as well as responding to requests for retroactive SPSL pay, on March 29, 2021.

Section 248.2 defines "employer" as both private and public employers with more than 25 employees. "Covered employee" means an employee who is unable to work or telework for an employer because of a reason listed below as a permissible use.

Under this new law, "covered employee" means an employee who is unable to work or telework for an employer because of a reason listed below as a permissible use.

- The employee is subject to a quarantine or isolation period
- The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19
- The employee is attending an appointment to receive a vaccine for protection against contracting COVID-19
- The employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis
- The employee is caring for a family member who is subject to a quarantine or isolation period or who has been advised to self-quarantine
- The employee is caring for a child, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

The pay rate of SPSL under Section 248.2 is different from the calculations dictated by Section 248.1. Information regarding the process for determining the amount of leave employees receive and the rate of pay employees are eligible for can be viewed here.

SB 95 makes the requirement to provide SPSL under Labor Code section 248.2 retroactive to January 1, 2021. This means that an employee can apply SPSL for any absence since January 1, 2021, that falls within a permissible use, as described above. Similarly, an employer that has provided COVID-19 related leave since January 1, 2021 for any of the permissible uses described above can be credited for such leave.

1.ThinkHR. (2021, March). American Rescue Plan Act Signed into Law. Retrieved from https://www.thinkhr.com/blog/american-rescue-plan-act-signed-into-law/
2.Haydel Gehrke, M. and Shou, R. (2021, March). California requires new COVID-19 Supplemental Paid Sick Leave in 2021. https://www.employmentlawwatch.com/2021/03/articles/employment-us/california-requires-new-covid-19-supplemental-paid-sick-leave-in-2021/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration

Training of the Month

We offer a wide variety of web training courses through our training portal, ThinkHR. Courses vary in length and cover an array of topics including workplace safety, diversity, and harassment prevention. The full course catalog is available upon request. All courses are offered at a rate of $10 per participant.

Below is one of our available courses. Please reach out to your Centricity team for more information on this or any courses that interest you.

Emergency Response in the Workplace

This course provides information about planning for and responding to emergencies. The intent is to provide the learner with basic information on procedures that cover onsite emergencies such as an accidental release or spill of a hazardous chemical, fire emergencies, explosions, bomb threats, threats to security, or personal injuries. Learner objectives are to define basic terminology associated with emergency response, recognize the presence of hazardous substances in an emergency, specify the risks associated with hazardous substances in an incident, define the role and responsibilities of the Emergency Response Team, among others.

201 North Civic Drive. Suite 245
Walnut Creek, CA 94596
866-379-7054 – Toll Free
925-280-6332 – Main
www.centricity-solutions.com
support@centricity-solutions.com

Q&A Corner

How should an employer respond to an employee who resists returning to onsite work due to fear of contracting the coronavirus?

It depends on why your employee is afraid to return to work. If an employee fears contracting COVID-19 because of an existing health condition, the employee may be eligible for leave under the Family and Medical Leave Act (FMLA) or an accommodation such as remote work under the Americans with Disabilities Act (ADA).

For example, crowds and public spaces may be triggers for an employee with an anxiety disorder, and such fears may be exacerbated by the coronavirus threat. Consider also an employee with a chronic health condition, such as asthma or diabetes, who is at a higher risk of developing a severe COVID-19 infection. FM LA-covered employers should start the leave process with eligible employees by providing the FMLA's Notice of Eligibility and Rights and Responsibilities forms. The employer also should initiate the ADA's interactive process to determine if the employee's condition qualifies as a disability under the ADA and if the employer can provide an accommodation without undue hardship. An employee may also fear returning to work because a serious health condition places a family member at a higher risk of developing a severe COVID-19 infection. In this case, we recommend following your FMLA process to determine if the employee needs leave to care for the family member. However, an ADA accommodation isn't required in this situation. Per the EEOC, ADA does not require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom she is associated.

Lastly, there may be instances when an employee does not have a mental or physical impairment but is generally afraid of contracting COVID-19. In these situations, he advises, the employee has no federal protection and an employer can compel the individual to return to work upon threat of discipline. But Tolman recommends "an empathetic approach that alleviates fear, such as by educating your employees about the safety standards the company has adopted or providing flexible working arrangements, such as telework, whenever possible."

Janove, J. (2021, March) 6 Burning COVID-19-Related Legal Questions for 2021 **Retrieved from** https://www.shrm.org/hr-today/news/hr-magazine/spring2021/Pages/six-burning-covid-legal-questions-for-2021.aspx
HRPros (2020, December) **Q&A Stream. Retrieved from https://centricity.myhrsupportcenter.com/app/landing/20/show/list**

An employee says that the stress of the job is affecting their mental health. How should we handle this?

This employee may just need to talk through their concerns and get your help prioritizing or delegating. They may, for example, feel like every single thing on their to-do list is life-or-death by Friday at close of business, when that's not really the case. Some manager guidance can go a long way, especially for your employees who are usually self-directed. On the other hand, the stress and mental health effects the employee describes may rise to the level of a disability under the Americans with Disabilities Act (ADA). In this case, we would recommend beginning the interactive process to determine what, if anything, can be done to accommodate them so that the essential functions of the job get done to your standards and the employee is able to keep working. As part of this conversation, you can request a doctor's note to substantiate the disability.

If you have more general concerns about the effects of stress in your workplace, you might consider ways to help your employees reduce and manage their stress.

Can I require employees to turn on their cameras during meetings?

Yes, generally, you can require employees to have their webcam on during meetings. You may, however, want to take things like low internet bandwidth, equipment failure, software incompatibility, mental health, environmental circumstances, privacy issues, and other reasonable concerns into account when setting expectations. For example, employees may have difficulty staying connected if multiple people in their household are using video conferencing apps at the same time. We recommend that you send out some guidelines about video conferencing etiquette. You can include the expectation that employees will participate in meetings using their webcams unless there are extenuating circumstances. Supervisors can then handle, on a case-by-case basis, any issues with employees not using the webcam.

Is there a downside to screening the social media accounts of job candidates?

First, screening social media accounts creates extra risk. You could be exposed to information about a candidate's protected classes, such as their race, age, or religion. If your ultimate hiring decision were challenged, you would need to prove that those characteristics were not a factor in your decision. Second, it takes extra time and adds an unnecessary cost to your hiring process. The questions you ask on the application and during the interview should provide you with sufficient information to determine whether a candidate the right person for the job.