

LAW OFFICE OF LORI A. GOLDSTEIN, LLC

CLIENT BULLETIN DECEMBER 2020

THE END OF A LONG, INTERESTING YEAR



Congratulations on getting through a unique and challenging year for employers, business owners, workers and families! **Resilience and flexibility** are certainly buzzwords for 2020 and we will continue to shift in 2021 with the changing pandemic statistics, guidelines and protocols. This year has also provided some of the **greatest technological advancements in generations**. Thanks to the mRNA vaccine breakthrough, plunging clean energy costs, advancements in AI, and the realization that **corporate America can survive in a remote work environment**, there is growing confidence that the economy will see a burst of productivity growth. As vaccines roll out, there is **abounding optimism for the new year and a new normal**, with improvements in health, the economy and the job market.

New Stimulus Bill Avoids Expiring Pandemic Benefits

Besides vaccines, the big news is the recent passage of the second stimulus bill. Many temporary programs were instituted by the federal government last spring to assist employees, independent contractors and businesses during the pandemic, and they were scheduled to expire on December 31, 2020. The **\$900 billion pandemic relief stimulus bill** passed by Congress and signed by the President on 12/27 extended many of those benefits in some fashion. Highlights of the bill include:

Additional PPP funding and Second Round of PPP loans. An additional \$267.5 billion is available for **first-time eligible small businesses** and borrowers. Past borrowers that returned some or all of their PPP loan can also reapply. Lending expands for nonprofit organizations, news outlets, and independent restaurants. A business that has **experienced severe revenue reductions can apply for a second PPP loan**. The conditions are: (1) 300 or less employees; (2) will have used all of their first PPP loan proceeds; and (3) 25% gross revenue decline in any quarter of 2020 as compared to the same quarter in 2019. The new PPP loans also **broaden forgivable expenses, including property damage, supplier costs, operating costs (e.g., cloud computing services, accounting expenses, and software)** and worker protection equipment to meet health and safety guidelines.

Federal Pandemic Unemployment Assistance Benefits Extended. The emergency federal unemployment benefits that supplemented state benefits and covered gig workers/independent contractors were also set to expire at year-end. The new law now provides **\$300 per week** in federal unemployment benefits and **extends the timeframe through March 14, 2021**. That's half of the \$600 supplemental benefits the government provided from April

through July, but equals the \$300 individuals received for 8 weeks until late September through an emergency presidential order. The March 14 extension will also apply to individuals who have exhausted their regular state benefits.

Individual Stimulus Payments. Amidst political wrangling among the House, Senate and President, individuals will soon receive a second stimulus payment. (The first - \$1200/person – was in April.) While many have been pushing for \$2000 payments, the approved payments are \$600. **Individual adults with 2019 adjusted gross income up to \$75,000 will receive \$600. Heads of households** earning up to \$112,500 and a **couple (or someone whose spouse died in 2020)** earning up to \$150,000 will receive **\$1200. An additional \$600 will be paid for each dependent child.** Finally, those with incomes just above these minimums will receive a **partial payment** (it declines by \$5 for every \$100 in income.)

FFCRA Leave at Employer’s Discretion After 2020. Since April, businesses and workers have benefitted from the Families First Coronavirus Response Act (FFCRA), which provided federally-subsidized **paid sick and family leave** through December 31 for COVID-19 reasons. Employers can obtain 100% reimbursement of the paid leave through payroll tax credits with their 2020 tax return.

The stimulus bill did NOT extend the deadline. After December 31, employees will no longer have legal rights to take FFCRA paid sick or family leave, even if they have a qualifying reason. But the bill **extended the tax credit for leaves taken through March 31, 2021.** While **employers are not required** to provide leave under the FFCRA in 2021, they **may opt** to do so and receive payroll tax credits. Employers should continue to follow IRS documentation requirements.

If the employer voluntarily extends FFCRA leave, employees would not be allotted new hours, but through March 31, they can take the **unused portion of their original allotment** that remains on January 1. However, whether an employee’s FFCRA paid family leave bank resets if employers use a calendar year tracking period for regular FMLA leave is unclear. DOL or IRS should provide guidance soon.

Employers who **choose not to extend FFCRA to 2021 should advise employees.** Businesses should still review and follow state and local sick and family leave laws and company policies.

Can Employers Require Employees to Get the COVID Vaccine?

This burning question from workers and businesses alike was answered in the latest guidelines issued by the Equal Employment Opportunity Commission (EEOC.) Employers **can** require that employees get inoculated as a condition of going to work, but this is subject to **exceptions/accommodations** for medical or religious reasons.

Under the Americans with Disabilities Act, before an employer can exclude a worker from the physical worksite, the employer must determine if the unvaccinated employee presents a **significant risk in harm to health or safety that cannot be eliminated or reduced through reasonable accommodations.**

Once an employer is **on notice that an employee’s disability or sincerely held religious belief, practice, or observance prevents** the employee from receiving the vaccination, the employer **must try to provide a reasonable accommodation** unless it would pose an “undue hardship” (significant difficulty or expense which is often hard to prove. Allowing **work from home** is a reasonable accommodation.

Managers and supervisors responsible should know how to **recognize an accommodation request** and know to whom the request should be referred for consideration. Employers and employees should engage in a **flexible, interactive process** to identify workplace accommodation options that do not constitute an undue hardship. This process should include determining whether it is necessary to obtain **supporting documentation** about the employee’s disability and considering the possible options for accommodation given the nature of the workforce and the employee’s position.

If there is **no accommodation** possible (e.g., the work can’t be done remotely), then an employer may prohibit the employee from entering the premises but **not necessarily fire** the worker. The employer must see if the employee has any other rights under federal or local laws, including the ability to take unpaid FMLA leave.

Employers should also beware that **pre-screening vaccination questions** may implicate the ADA’s provision on disability-related inquiries. According to the CDC, **health care providers should ask certain questions to ensure that there is no medical reason that would prevent the person from receiving the vaccination.** If the employer administers the vaccine, it must show that such pre-screening questions it asks employees are “**job-related and consistent with business necessity.**” Additionally, pre-screening questions that ask about **genetic information**, such as **employee or family members’ medical histories**, may violate the Genetic Information Nondiscrimination Act (GINA.)

Proof of vaccines can be required by employers who mandate the vaccine - this is not likely to elicit information about a disability. However, subsequent employer questions, such as **asking why an individual did not receive a vaccination, may elicit information about a disability** and would be subject to the “job-related and consistent with business necessity” standard. If an employer requires employees to provide proof that they have received a COVID vaccination from a **pharmacy or their own health care provider**, the employer may want to **warn the employee not to provide any medical information** as part of the proof in order to avoid implicating the ADA.

Employer Considerations for Vaccines

Deciding whether to mandate or simply encourage the vaccine will require careful assessment:

- **Safety burdens** — Employers will need to determine whether an employee poses an undue safety burden on co-workers if exempt from the vaccine or if they choose not to get vaccinated. There may be appropriate protocols that reduce the burden, such as social distancing, masks, staggered shifts, worksite barriers and signs, and of course, telecommuting.
- **Exemptions** — With mandated vaccines, be prepared to assess whether an individual qualifies for a reasonable accommodation based on medical condition or religion. This requires a case-by-case basis evaluation under applicable law.

- Logistics – Considerations may include: Who will pay for the vaccine? Once vaccines are widely available, what is the deadline for employees? Will the company provide on-site vaccination?
- Legal risks of vaccines — Legal claims are possible if an employee mandated to be vaccinated experiences related adverse reaction or develops health problems.

Continue to Follow CDC Guidance and Applicable Regulations and Protocols

We are not out of the woods yet. Achieving herd immunity through global vaccination is a hopeful goal for 2021 and will take time. **Mask mandates, social distancing and encouraging work from home will likely be in place for at least the next 6 months.** Whether your business continues with or shifts to full remote, hybrid, or full on-site work, it is crucial to **monitor and follow the CDC, federal and applicable state and local mandates and guidance** for a safe and healthy workplace. This includes the current Illinois Tier 3 mitigation guidelines, applicable city and county travel and close contact quarantines, and the best practices we have been recommending for “return to the workplace.”

In early December, the **CDC shortened the recommended quarantine period for close contact** with a person who has COVID. Instead of 14 days, individuals should quarantine for 7-10 days. Specifically, a person can end a self-quarantine at **7 days** after exposure if they **test negative** and have **no symptoms**. **Without a test**, a person should self-quarantine for **10 days**, and monitor themselves an additional 4 days for symptoms.

Similarly, **Chicago’s travel quarantine mandate was reduced from 14 to 10 days**. Cook County’s travel quarantine guidance remains at 14 days. Be sure to review and update your policies, protocols and employee disclosure forms.

- ✓ *Effective January 1, 2021, Illinois’s minimum wage will increase to \$11 per hour. The minimum base wage for tipped employees will increase to \$6.60 per hour.*
- ✓ *I can help with **updating policies and forms**, and please check my website for COVID and general employment law bulletins and updates: [Law Office of Lori A. Goldstein](#)*
- ✓ *I work with both **employers and employees** (not at the same company, of course!) on workplace matters, compliance, contracts, training, and dispute resolution.*
- ✓ ***Career Resource Center is celebrating 30 years** of helping individuals find satisfying work. As a proud CRC Board member, I can’t say enough about the wonderful career transition services offered by CRC, a nonprofit celebrating 30 years of success. **CRC is now virtual, helping clients nationwide.** We are here for employees between successes, recent college graduates, individuals returning to the workforce, those seeking a change of employment or career, and employees who need a boost in their career transition search. To schedule an appointment or to learn about membership, contact [Kelly Clark](#). Try out a workshop, or join for a year. Volunteers and donors always welcome too! [careerresourcecenter.org](#).*

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