

# LAW OFFICE OF LORI A. GOLDSTEIN, LLC

## CLIENT BULLETIN LABOR DAY 2020

### STATE OF THE WORKPLACE



September 7 marks more than 125 years since the national Labor Day holiday was created. Held on the first Monday of September, the holiday is dedicated to the **social and economic achievements of workers toward the strength, prosperity, and well-being of our country**. We sincerely aim for those goals in the midst of unprecedented and unstable times. This “State of the Workplace” addresses related topics that are sure to be top of mind for employer and workers for some time. Please have a safe and healthy holiday weekend!

#### FFCRA Leave and School “Closings”

Across the country, students and parents are navigating changes in learning this fall – whether full remote, hybrid, or on-site with staggered schedules, one-way halls, and multiple safety rules. In a recent Illinois Patch survey, 68% of Chicagoland parents indicated they would opt for in-person learning. While 28% said they were “very happy” with their children's school’s plan, another 28% were “very unhappy.”

Now more than ever, working parents and employers need to understand **school-related paid leave rights under the Families First Coronavirus Response Act (FFCRA.)** The statute allows certain employees to take up to 12 weeks of paid leave “because of a need to care for the employee’s son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons.”

The Department of Labor (DOL) has issued FAQs to **clarify when school is “closed”** such that leave is available.

- **Can an employee take paid leave if his child’s school is operating on an alternate day (or other hybrid)-attendance basis?**

**Yes**, one can take paid leave on days when your child is not permitted to attend school in person and must instead engage in remote learning, as long as you need the leave to actually care for your child during that time and only if no other suitable person is available to do so. Under FFCRA, the school is effectively “closed” to your child on days that he or she cannot attend in person.

- **What if a parent has a choice between having her child attend in person or remotely and chooses remote learning based on fears relating to COVID?**

FFCRA leave is **not available because the school is not “closed.”** However, if, because of COVID-19, your child is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, you may be eligible to take paid leave to care for him or her.

- **What if the school year begins remotely, but may reopen for in-person attendance later in the school year?**

FFCRA applies **while the school remains closed.** If it reopens, the availability of paid leave depends on the reopening details; see answers to questions above.

## State and Local COVID Laws

Employers with employees outside Illinois must also comply with applicable state and local leave and anti-retaliation laws enacted for the pandemic, including some specifically to cover larger employers (since FFCRA does not apply to employers with 500 or more employees.) Please contact me for a copy of the full list. Examples include:

- **Chicago—bans retaliation** against employees for staying home from work for certain COVID-related reasons, including caring for others with COVID. Violators face monetary penalties, plus damages of 3 times the wages the employee would have earned and attorneys’ fees.
- D.C. – provides workers employed at least 30 days up to **16 weeks of unpaid COVID-19 leave.** Reasons include: a health care provider recommends quarantine because the employee or an individual with whom the employee shares a household is at high risk for serious illness from COVID-19; and the need to care for a child whose school or place of care is closed or whose childcare provider is unavailable.
- New York state requires **leave for employees subject to a quarantine or isolation order** due to COVID. The extent of paid leave, if any, depends on the size and net income of the employer.
- San Francisco provided funds to employers to provide **5 days of sick leave beyond employers’ existing policies,** for employees who have exhausted their currently available sick leave or have no federal or state supplemental sick leave.

## New FMLA Forms

Speaking of leave, in July DOL rolled out new, simplified forms for employers to use for leave under the federal Family and Medical Leave Act. They are available on the DOL website.

## DOL Guidance for Reopening

In late July, DOL issued additional guidance to provide information to workers and employers about how the requirements and protections of the [Fair Labor Standards Act \(FLSA\)](#), the [Family and Medical Leave Act \(FMLA\)](#), and the [Families First Coronavirus Response Act \(FFCRA\)](#) impact the workplace as America continues to reopen.

## Work from Home – The New Norm

Businesses and employees have become accustomed to productive remote work. Google will keep all employees remote until at least next summer, becoming the first major American company to extend the

timeline for work-from-home an entire year. The decision will affect nearly all of Google parent Alphabet's 200,000 employees.

Employees working more flexible schedules to accommodate the interruptions of life in a pandemic can prompt questions for employers. DOL recently issued guidance on requirements for tracking employee's telework hours. In [Field Assistance Bulletin \(FAB\) 2020-5](#), the agency reaffirmed that an employer must **pay its employees for all hours worked, including work not requested but allowed** and work performed at home. If the **employer knows or has reason to believe** (through **reasonable diligence**) that work is being performed, the time must be counted.

Companies can exercise such diligence by providing a reasonable **reporting procedure** for non-scheduled time and compensating employees for all reported hours of work, even hours not requested by the employer. If an employee fails to report unscheduled hours worked through such a procedure, the employer is not required to undergo impractical efforts to investigate further to uncover unreported hours of work and provide compensation for those hours.

## **Easing the Burden - Unemployment Benefits and Payroll Tax News**

Since the federal supplemental pandemic **\$600/week unemployment benefits expired on July 31**, individuals have faced financial challenges on top of being unemployed. Congress was unable to agree on an extension, but in early August, a presidential order authorized a **\$300 weekly supplement as a temporary fix**. 35 states have applied for and begun receiving those benefits. Gov. Pritzker announced last week that he has **applied for Illinois**.

Meanwhile, as laid off, furloughed or reduced-hour workers continued to struggle with the claims process, **Illinois has extended jobless benefits another 20 weeks** (beyond Illinois' standard 26 weeks.)

Speaking of unemployment, the Federal Reserve is codifying a major change to U.S. monetary policy that prioritizes employment over inflation. The central bank clarified that maximum employment is more important to the economy than the resulting rise in inflation. So, borrowing rates for car, home and other loans are likely to remain low for a long time.

Another temporary solution to ease workers' financial burden is the recently announced federal payroll tax holiday. Companies who opt in can **defer until year-end withholding Social Security deductions**, making paychecks higher for a few months. The deferred taxes will have to be paid in 2021.

## **Latest on Travel Quarantines and COVID protocol**

Various states, cities and counties have issued travel quarantine orders. Illinois has not, but Chicago has an Emergency Travel Order (mandated law) and Cook County has recommended travel quarantine "guidelines."

The Chicago order, effective since July 6, directs travelers coming into or returning to Chicago from states experiencing a surge in COVID-19 cases ("hot list") to **quarantine for 14 days**. The city publishes a new hot list each Tuesday, effective the following Friday. As of September 2, **22 states are on Chicago's hot list**. Essential workers who traveled to designated states (or to Cook County) for work purposes are exempt, as are people who travel for medical care and parental shared custody.

Cook County's travel guidelines and hot list mirror Chicago's, but are not subject to fines or penalties. Still, it's good practice for individuals and employers to follow. The orders and guidelines also serve as a basis for employers to institute employee and customer/visitor travel policies related to COVID.

COVID Waivers for Contractors and Customers

On a related note, businesses should consider having **independent contractors and customers sign waivers and releases of liability** for contracting COVID-19. Unlike employees, who cannot lawfully waive workers' compensation claims for work-related injuries and illnesses, independent contractors and customers are typically not covered by such laws.

## Only 4 Months to Conduct Annual Sexual Harassment Training

While businesses have been understandably busy with pandemic-related situations and requirements, don't lose sight of the **December 31, 2020 deadline for providing sexual harassment training to your employees**. In the aftermath of the Weinstein and related scandals, Illinois joined several states in requiring all employers to provide sexual harassment prevention training.

Harassment of any kind in the working environment, including sexual harassment, is illegal regardless of where you are working. **"Working environment" is not limited to a physical location** that an employee is assigned to perform his or her duties, can be via e-communications, and does not require an employment relationship.

Employers need to be able to define harassment, recognize it, take steps to prevent it, ensure that employees understand how to report it, and fulfill your responsibilities to investigate and remediate.

The 2020 amendment to the Illinois Human Rights Act mandates that **employers with 1 or more Illinois employee offer sexual harassment training by 12/31/20** and annually thereafter. It is recommended that independent contractors be included.

## Sexual Harassment Training for Licensed Mental Health Professionals

Mental health professionals and the boom in telehealth have been a huge respite for the stress and anxiety most of us are experiencing these days. They also understand better than most about the effects that harassment can have on individuals. As of 2020, **Illinois requires mental health professionals to undergo 1 hour of annual sexual harassment training for licensure requirements**. If you do not provide and participate in the IHRA-mandated training as an employer, employee or independent contractor working for a practice, then you must obtain the training as part of your continuing education credits.

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- ✓ *I can help with **updating handbooks, policies and forms**, and please check my website for COVID and general bulletins and updates: [Law Office of Lori A. Goldstein](#)*
- ✓ *I work with both **employers and employees** (not at the same company!) on workplace matters, compliance, contracts, training, and dispute resolution.*
- ✓ *Ask me for my **Employment Audit Questionnaire**. Complete and return and I will provide a free assessment of your company's legal employment compliance.*
- ✓ *If your organization is interested in a **presenter/panelist** on employment law issues, I'm your gal! 2020 has been busy and 2021 is filling up. Happy to send my list of topics on request.*
- ✓ ***Career Resource Center** is celebrating **30 years** of helping individuals find satisfying work and services are now **virtual and nationwide!** 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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