

LAW OFFICE OF LORI A. GOLDSTEIN, LLC

CLIENT BULLETIN MARCH 2021

RESCUE AND RECOVERY: COVID MARKS 1 YEAR



March came in like a “**lion**,” with COVID numbers still significant on the **March 11 one-year anniversary**. We continue to feel the impact on financial, housing and food insecurity, physical and mental health, education and work. But with the spring blooms is March’s “**lamb**.” Vaccination numbers are increasing, many restrictions are easing, and the **workplace is awakening to a new environment**.

March also brought well-needed assistance to families, workers and employers through the unparalleled \$1.9 trillion stimulus bill. Just 3 days before federal emergency unemployment benefits were due to expire, President Biden signed the **American Rescue Plan Act of 2021** (ARPA.) It provides for individual stimulus checks and child tax credits, payroll tax and employee retention credits, assistance to boost vaccination efforts and reopen schools, and funding to expand access to health care and address food and housing insecurities.

ARPA EXPANDS AND EXTENDS EMPLOYMENT SUPPORT

Many of the employer/employee coronavirus relief measures offered last year will renew or continue in some form. Key highlights include **FFCRA leave, extended unemployment benefits, and COBRA subsidies**.

Voluntary Paid FFCRA Sick and Family Leave Extended and Expanded

Emergency paid sick and family leave offered last year under the Families First Coronavirus Response Act (FFCRA) expired on December 31. This fully subsidized benefit provided crucial paid time off for employees sick with COVID, quarantining, caring for infected family members, or unable to work due to school closures or absence of child care.

The second stimulus package last December did permit employers to **voluntarily** opt to continue the benefits through March 31 and still receive the full payroll tax credits. The ARPA has further **extended the tax credits for employers who voluntarily provide FFCRA benefits through September 30, 2021**. The new law also expands FFCRA leave:

- Employees’ **10-day limit** for paid sick leave **resets** on 4/1/21. (Pay is still at the employee’s regular rate – up to \$511/day for employee illness or quarantine, and at 2/3 that rate – up to \$200/day to care for others.)
- **Family leave** maximum benefits increased from \$10,000 to **\$12,000**.

- Employees no longer need to use up the 10-day sick leave before taking family leave.
- The eligibility reasons have been enhanced. An employee can take leave if unable to work or telework because the employee is:
 - subject to a federal, state, or local quarantine order;
 - advised by a health care provider to self-quarantine;
 - has COVID-19 symptoms and is seeking medical diagnosis;
 - caring for an individual subject to a quarantine or isolation order;
 - caring for a child if the school or day care center has been closed, or the child-care provider is unavailable; or
 - **getting a COVID vaccine and recovering from any related illness (new.)**

Employers should consider whether they will adopt the extended FFCRA leave provisions and/or use them to incentivize employees to get the COVID vaccine.

Supplemental Unemployment Benefits Continue

ARPA saved federal unemployment benefits just as they were due to expire on March 14. The emergency pandemic supplement will continue at **\$300/week continue through September 6, 2021**, as will the waiver of the 1-week unemployment benefit waiting period.

COBRA Expansion

ARPA provides significant help to employees and their families who are eligible for COBRA (or state mini-COBRA for employers with less than 20 employees.) The law provides a **100% subsidy for COBRA premiums** from April 1, 2021 through September 30, 2021. Employers who maintain the health plan are eligible for a tax credit.

The subsidy applies to any COBRA qualified beneficiary who **elects COBRA between April 1 and September 30, 2021**, due to a reduction in hours or an involuntary termination of employment. They will have at least a 60-day window to elect COBRA coverage, which will be effective April 1, 2021.

Employees need not elect coverage retroactive to the date of their qualifying event and they are **not required to pay outstanding premiums for prior periods** of coverage.

The **subsidy ends** when the first of the following occurs:

- beneficiary becomes eligible for other group health plan coverage or Medicare;
- beneficiary's maximum COBRA duration ends; or
- September 30, 2021.

Employers should follow up with their COBRA administrators and insurers to update and provide COBRA (or mini-COBRA) notices.

NEW CDC GUIDANCE FOR VACCINATED

Consistent with more vaccinations and easing restrictions, last week the CDC announced that **fully vaccinated people can safely spend time indoors** with others without following most COVID

public safety protocols. “Fully vaccinated” means 2 weeks following the single-shot dose or the second dose of a two-shot vaccine. When spending time inside **with vaccinated people or unvaccinated folks from a single household who are at low risk** from severe COVID, fully vaccinated individuals **need not wear masks or social distance**. Nor must they follow similar quarantine and testing protocol if exposed to the virus and asymptomatic.

PUSH FOR EMERGENCY HEALTH AND SAFETY STANDARD

In January, President Biden asked Congress to authorize OSHA to issue a national COVID protection standard and provide funds for OSHA enforcement. The focus is on **high-risk industries** and **employers that retaliate** against employees who complain about workplace hazards.

Based on a recent audit on pandemic-related measures, DOL’s Office of Inspector General found an increased risk that OSHA “is not providing the level of protection that workers need at various job sites.”

The audit noted that **OSHA failed to keep pace in investigating** the multitude of complaints in 2020 (15% more complaints than the prior year, but 50% fewer inspections, with most done only remotely.)

OSHA did issue detailed COVID guidance for employers in late January: <https://www.osha.gov/coronavirus/safework>. But that **guidance lacks the enforceability** of formal OSHA standards or rules. OSHA is considering whether to issue an **emergency standard**. Be on the **lookout for increased OSHA inspection and enforcement** related to COVID workplace safety complaints.

On a related note, recent **Illinois legislation extended to June 30, 2021 the rebuttable presumption** that “essential” workers who contract COVID were infected while working, making it easier for them to establish successful claims for **workers’ compensation** benefits.

UNEMPLOYMENT CLAIMS AND REFUSAL TO WORK

An employee’s eligibility for **unemployment benefits for refusing “unsafe working conditions”** has been a prevalent issue during the pandemic. Pres. Biden has asked DOL to issue guidance establishing this as a guaranteed **worker’s right**.

But employers are concerned that this would reward employees who **subjectively decide** when they can refuse work. It could also cause a significant portion of the **workforce to stay home**. This would certainly complicate and delay state unemployment agencies’ assessment of whether employees appropriately refused unsafe working conditions.

Whether DOL even has authority to dictate state coverage terms is not clear. Workers in **Illinois do not have automatic eligibility simply based on their subjective belief**. But the state agency could consider an employee’s physical fitness, prior training and individual risk. Perhaps states will modify their own rules and definitions.

Employers should keep an eye out for national or state guidance. Creating and maintaining a safe workplace not only protects your workers and customers, but also reduces the risk of successful unemployment claims. Businesses that can **show that they use OSHA safety protocols and standards could challenge related unemployment claims** based on an employee’s unreasonable refusal to work.

According to the current OSHA guidelines, an employee can refuse work **only if all of the following conditions** are met:

- Where possible, the employee has **asked the employer to eliminate the danger**, and the **employer failed** to do so.
- The employee refused to work in **good faith** (he genuinely believes that a reasonable apprehension of **death or serious injury** exists.)
- A **reasonable person** would agree that there is a **real danger** of death or serious injury.
- There is not enough time, due to the **urgency** of the hazard, to get it corrected through regular enforcement channels, such as an OSHA inspection.

Take complaints seriously, promptly respond, document and investigate, and follow up with employees. Be sensitive to employees' concerns. **Be proactive and constantly communicate** about steps taken to make the workplace safe. Monitor, review and implement OSHA and CDC guidance on workplace safety during a pandemic.

Finally, be cautious on how you respond to an employee's absence due to workplace safety concerns. Disciplinary action may be viewed as retaliation in violation of public policy, and it negatively impact morale.

SO, WHEN AND HOW WILL OFFICES REOPEN?

Nearly 25% of employees nationwide are going into work these days. As the pandemic numbers decrease, businesses are questioning when and how to reopen and bring workers back to the office. Many employees are anxious to return to more normal times, have lunch out with colleagues, visit clients. But our **world has changed**, including the appreciation for the benefits of remote work. Many companies have **no timeline or plan** yet, many renegotiating or ending leases. Not everyone is vaccinated or comfortable with commuting. Parents are still navigating remote or hybrid schooling. Depending on the nature of the work, **continuing remote work is a real possibility**. But then there are concerns about **integrating new hires** into the workplace culture and the loss of physical collaboration and socialization. Employers and workers will continue to face questions as circumstances and legal regulations change. Feel free to contact me for assistance.

- ✓ *I have been busy **updating policies, non-compete agreements, and employee handbooks, and providing mandated sexual harassment training**. Please check my website for 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.*
- ✓ ***Career Resource Center is celebrating 30 years** as a nonprofit helping individuals find satisfying work with its [Campaign for the Future](#). As a proud Board member, I can't say enough about the wonderful career transition services, currently **virtual and nationwide**. Whether you are between successes, a recent college graduate, returning to the workforce, seeking a change of employment or career, or you need a boost in your career transition search, CRC is for you. 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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