

# **Recent 2020 Employment & Business Law Developments**

January 4, 2021

By John Vering and Mark Opara



## **EMPLOYERS MAY VOLUNTARILY EXTEND FFCRA PAID LEAVE BENEFITS AND RECEIVE A PAYROLL TAX CREDIT THROUGH MARCH 31, 2021**

As you probably recall, when Congress passed the Families First Coronavirus Response Act (FFCRA), it provided that paid sick leave and paid extended Family and Medical Leave benefits would expire on December 31, 2020. The latest Coronavirus relief act signed on December 27, 2020, provides that employers will no longer be required to provide the two weeks of emergency paid sick leave and the expanded paid Family and Medical Leave which provided up to 10 weeks of paid leave for parents missing work because of school and child care closures associated with COVID-19. However, the new stimulus act gives employers subject to the FFCRA (i.e., employers with fewer than 500 employees and public employers) the option to allow employees who have not used up their two weeks of emergency paid sick leave and employees who have not used up their 10 weeks of paid expanded Family and Medical Leave to use that unused paid leave through March 31, 2021. Non-public employers who elect to allow their employees to carry over this paid leave are able to take the payroll tax credit for paid FFCRA leave taken by those employees during the January 1, 2021 through March 31, 2021 time period. Please note that employees do not receive new banks of paid leave on January 1, 2021 but are only allowed to carry over emergency paid sick leave and expanded Family and Medical Leave that was not used in 2020.

## **INCREASE IN MINIMUM WAGE RATE**

Effective January 1, 2021, the minimum wage in Missouri increases from \$9.45 to \$10.30 per hour and the minimum tipped wage increases from \$4.725 to \$5.15 per hour. The Kansas minimum wage for 2021 remains the same at \$7.25 per hour with a minimum tipped wage of \$2.13 per hour which are the same rates as under federal law. If you have employees outside Missouri and Kansas, check applicable state and local minimum wage laws to insure that you are paying these employees the rates required by applicable law.

## **DOL ANNOUNCES FINAL RULE ON TIP POOL SHARING AND LIMITATIONS ON 80/20 RULE**

On December 22, 2020, the U.S. Dept. of Labor announced a final rule regarding expansion of tip pool sharing and limitations on the 80/20 rule. While all the details of the final rule are beyond the scope of this Client Alert, the key provisions of the final rule are that (1) employers are permitted to include “back of the house” employees (e.g., cooks and dishwashers) who do not receive tips to be included in mandatory tip pools alongside “front of the house” employees (e.g. waiters, bartenders, and hosts) so long as the employer pays the employees at least the federal minimum wage without relying on the FLSA’s tip credit; and (2) owners, managers and supervisors can never participate in tip pools; and (3) employers are permitted to take the tip credit regardless of the amount of non-tip generating work (such as cleaning tables or rolling silverware) a tipped employee performs as long as it is performed contemporaneously with his/her tipped duties or within a reasonable time immediately before or after performing tipped duties; and (4) employers must generally distribute tips no later than the regular payday for the work week in which the tips were received and employers that operate a tip pool must maintain weekly or monthly reports of the tips received by their employees. The new rule is scheduled to go into effect March 1, 2021; however, it is possible that this rule will be overturned by Congress or the upcoming Biden administration. Therefore, we recommend that employers continue business as usual until there is some legal clarity regarding whether this new rule will actually become law.

## **ADDITIONAL PPP FUNDING AND SECOND ROUND OF PPP LOANS**

The new Stimulus Bill contains provisions for additional PPP loans for small businesses and provides for a second round of PPP loans. The provisions relating to PPP are beyond the scope of this Client Alert. Check with John Fuchs [jfuchs@sb-kc.com](mailto:jfuchs@sb-kc.com) or your regular contact at Seigfreid Bingham if you have questions regarding PPP issues.

## **DOL EXTENDS AND CLARIFIES RULE THAT TELEMEDICINE QUALIFIES AS AN “IN-PERSON” VISIT FOR FMLA PURPOSES**

On December 29, 2020, the U.S. Dept. of Labor announced that due to the pandemic it would consider an “in-person” visit for FMLA purposes a telemedicine visit if it includes (1) an examination, evaluation, or treatment by a health care provider; and (2) if it is permitted and accepted by state licensing authorities; and (3) it is performed by video conference. A simple telephone call, letter, email or text message are insufficient by themselves to satisfy the regulatory requirement of an “in-person” visit.

## **BUSINESS MEALS DEDUCTION**

As part of the new Stimulus Bill, employers will be able to deduct 100% of their business meal expenses that are incurred in 2021 and 2022.

*This article is general in nature and does not constitute legal advice. Please note that new guidance is being provided by authorities on a daily basis so please monitor new developments and guidance, including but not limited to our firm’s COVID-19 Resource Center. Readers with legal questions should consult the authors, John Vering ([jvering@sb-kc.com](mailto:jvering@sb-kc.com)), Mark Opara ([mopara@sb-kc.com](mailto:mopara@sb-kc.com)), or other shareholders in Seigfreid Bingham’s Employment Law Group, including: Shannon Johnson, Brenda Hamilton, John Neyens, Julie Parisi, Christopher Tillery or your regular contact at Seigfreid Bingham at 816-421-4460.*