

Medical Leave Litigation Risks for Non- Compliant Employers

As more employees go back to work, employers face the tough task of ensuring their medical leave policies and practices are compliant with the new wave of local, state, and federal regulations aimed at helping employees affected by COVID-19. Employers unaware or negligent of the applicable regulation changes are starting to feel the heat from federal agencies and employee legal action. BASIC has previously offered explanations of the new federal leave regulations to help employers navigate through the pandemic. Today, we revisit some of those federal requirements with the added context of more recent state and local legislation and case law examples.

The Families First Coronavirus Response Act (FFCRA) offers expanded medical leave for employees of covered employers. The FFCRA states that certain public employers and private employers with fewer than 500 employees must provide up to 80 hours of paid sick leave due to inability to work from

COVID-19 related quarantine or medical care. Many employers are struggling to understand the nuances and administrative requirements of the FFCRA and complaints and lawsuits alleging improper administration are beginning to emerge.

For example, a federal lawsuit filed by an employee of Irvington Township in New Jersey, a covered public employer, alleges that Irvington denied expanded leave for COVID-19 exposure while working in the municipal office. The complaint also alleges that Irvington made improper deductions to the employee's paychecks after he continued to request paid leave. While still in the early stages of litigation, this employer could potentially face fines, penalties and other monetary judgements if the court rules that Irvington violated the requirement to provide Emergency Paid Sick Leave, as outlined in the FFCRA.

States are also developing their own medical leave legislation to supplement the new federal leave laws. The Colorado state legislature recently passed SB20-205, also known as the Healthy Families and Workplaces Act (HFWA), and is now awaiting signature by the governor. The new legislation requires all employers with employees in Colorado to offer three types of leave,



including COVID-19 emergency paid sick leave (CO-EPSL), paid sick and safe time (PSST), and public health emergency paid sick leave (PHEL). While great news for employees, employers must be diligent in their compliance efforts to avoid running afoul of applicable federal and state leave requirements, which may be costly. For example, the HFWA outlines penalties of \$100 for posting violations and \$100 per willful notice violation. Employers may also be forced to pay damages in the form of back pay, legal fees, and equitable relief. While this is not a full accounting of potential employer risks, it's enough to illustrate an employer's need for compliance.