

Legal Impact of COVID-19 for Trucking

Companies

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Shareholder Larry Hall partnered with business/employment attorney Tosha Childs for a presentation to the Missouri Trucking Association Council of Safety Supervisors on the Legal Impact of COVID-19 for Trucking Companies. Conducting business during challenging times, mitigating risk, and planning for worst case scenarios is nothing new for the trucking industry. COVID-19, while unprecedented, is no different than many common daily challenges for trucking companies. To be successful, keep it simple. Know the rules, have a plan and execute the plan. While we provide some general guidance below, it's always best to consult an attorney about specific compliance questions.

On March 18, 2020, President Donald Trump signed the Families First Coronavirus Response Act (FFCRA). The FFCRA became effective April 1, 2020, and is set to expire December 31, 2020. The act requires specified employers to provide leave under the Emergency Family and Medical Leave Expansion Act (E-FMLA) as well as the Emergency Paid Sick Leave Act (E-PSLA). The FFCRA applies to private-sector employers with fewer than 500 employees, however, the law allows the Secretary of Labor to exempt small businesses (defined as those with fewer than 50 employees) if the required leave would jeopardize the viability of their business.

Under the FFCRA, if an employee is unable to work due to a quarantine order, has been advised not to work by doctor, or is experiencing COVID-19 symptoms, they are entitled to two weeks paid sick leave based on the higher of the employee's regular pay rate or the applicable state or federal minimum. If an employee is unable to work because they are caring for an individual who meets the criteria above, they are entitled to 2/3 of their weekly pay. The FFCRA also provides that if an employee is unable to work due to a need to care for a child who is under 18 because the child's school or childcare provider is closed due to COVID-19, the first two weeks can be unpaid. An employee can opt to substitute accrued vacation, personal or sick leave during this time, but an employer may not require an employee to do so. The employee is entitled to the remaining 10 weeks of paid sick leave and family leave at 2/3 pay for up to \$200 daily and \$12,000 total. The good news for employers is they are able to claim a limited refundable employment tax credit equal to payments made to employees for E-FMLA, subject to maximum limits.

Best practices to permit safe and successful return to work involve using appropriate screening protocols (temperature checks, questionnaires, and testing when possible), having appropriate PPE available, and adhering to government recommendations. When possible, staggered work schedules are helpful. While the trucking industry is notoriously hard working, it is critical employees are encouraged to stay away from the workplace and seek medical guidance if they are having COVID-19 symptoms or have had contact with someone diagnosed with COVID-19. Some additional good advice is to close shared workspaces such as break rooms or stagger their use and clean/disinfect between users.

Lastly, while the FMCSA recently extended the Emergency Declaration suspending hours of service requirements when hauling certain products related to COVID-19 relief and deemed critical, injury attorneys are aware of this suspension and are promoting the possibility drivers are on the road fatigued. Accordingly, it is important trucking companies encourage their drivers, regardless of what they are hauling, to get appropriate rest to remain alert and attentive at all times.

Taking simple pro-active measures can help keep your employees and their families safe, and your trucks on the road.