COVID-19 and the Family and Medical Leave Act Questions and Answers

While everyone is hearing a lot about the new Family & Medical Leave Act (FMLA) law, the normal FMLA law comes into play for the normal "serious medical condition" situation, for employers with fifty or more employees.

This Q&A discusses events that can be triggered by the current pandemic. In it, the Department of Labor states, "[e]mployers should encourage employees who are ill with pandemic influenza or are exposed to ill family members to stay home and should consider flexible leave policies for their employees in these circumstances."

Here are a few reminders this piece includes:

Q: Can an employee stay home under FMLA leave to avoid getting pandemic influenza?

A: The FMLA protects eligible employees who are incapacitated by a serious health condition, as may be the case with the flu where complications arise, or who are needed to care for covered family members who are incapacitated by a serious health condition. Leave taken by an employee for the purpose of avoiding exposure to the flu would not be protected under the FMLA.

Q: May employers change their paid sick leave policy if a number of employees are out and they cannot afford to pay them all?

A: Federal equal employment opportunity laws do not prohibit employers from changing their paid sick leave policy if it is done in a manner that does not discriminate between employees because of race, sex, age (40 and over), color, religion, national origin, disability, or veteran status.
This piece also contains a statement that “[t]here is currently no federal law covering non-government employees who take off from work to care for healthy children, and employers are not required by federal law to provide leave to employees caring for dependents who have been dismissed from school or child care.”

Readers must be very careful relying on anything they read on the internet, no matter how apparently authoritative. The new federal law indeed applies when a qualified employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.” It does not matter if the child is healthy.

Refer to this link [https://www.dol.gov/agencies/whd/fmla/pandemic](https://www.dol.gov/agencies/whd/fmla/pandemic) for a more in-depth discussion, and as always, do not rely on this or other publications as “legal advice.” Consult with legal counsel directly if legal advice is needed.

If you have any questions, please contact a member of the Connolly Gallagher Labor and Employment Group.