



## Summary of Recent Agency Activity on Employment-Related COVID-19 Issues

Last week (April 4-12), several federal agencies issued updated guidance for employers on issues relating to COVID-19, including:

- On April 4 and 5, the Department of Labor (“DOL”) issued guidance to state agencies regarding the two unemployment assistance programs available under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). Pandemic Unemployment Assistance (“PUA”) provides for up to 39 weeks of unemployment benefits to eligible workers impacted by the pandemic. The CARES Act also established the temporary Federal Pandemic Unemployment Compensation (“PUC”) program. The PUC program establishes a \$600 fixed payment amount through July 31 for individuals who otherwise qualify to receive unemployment compensation.
- On April 6, the Department of Labor published its regulations implementing the Families First Coronavirus Relief Act (“FFCRA”), found [here](#). The regulations were largely consistent with DOL’s informal guidance on the FFCRA, which can be found [here](#). On April 10, these were updated and corrected.
- On April 8, the Occupational Safety and Health Administration (“OSHA”) reminded employers about the anti-retaliation provisions it enforces.
- On April 9, the Equal Employment Opportunity Commission updated its guidance for employers entitled “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws.”

Below is a brief summary of some of the most critical issues covered in these publications.

- **CARES Act and Unemployment Benefits:** The CARES Act guidance issued by the Department of Labor clarifies that PUA is available to those who cannot work for a

number of specified reasons, all related to the pandemic. PUA benefits are available not only to those who were employees, but also those who were self-employed and independent contractors. However, the benefit is not available to individuals who have work or remote work (referred to as “telework”) available to them. The PUA guidance can be found [here](#). With respect to the PUC program, the guidance from DOL makes clear that individuals must receive at least \$1 in “regular” unemployment benefits in order to qualify for the \$600 payment. The PUC guidance can be found [here](#).

- **FFCRA Regulations:** DOL’s regulations were officially published in the Federal Register on April 6, and they were immediately effective. DOL continues to update its guidance to employers regarding the emergency paid leave available under the FFCRA on a regular basis through a series of Questions and Answers on the Department’s website (found [here](#)). In the April 10 correction, one subsection of the regulations that caused confusion was removed. With this correction, it now appears that an employer may apply FMLA rules regarding substitution of paid leave during the 10 week paid period of the EFMLEA.
- **OSHA Anti-Retaliation:** OSHA noted that “it is illegal to retaliate against workers because they report unsafe and unhealthful working conditions during the coronavirus pandemic.” The agency further reminded that retaliation may include a variety of adverse employment actions, including “terminations, demotions, denials of overtime or promotion, or reductions in pay or hours.” OSHA’s reminder can be found [here](#).
- **EEOC Guidance:** The EEOC had previously issued guidance to employers regarding the novel coronavirus, and employer obligations under the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act of 1973 (applicable to certain federal contractors). These laws, which are enforced by the EEOC, limit a covered employer’s ability to make medical inquiries of employees and applications. EEOC had previously clarified for employers that under pandemic conditions, employers may generally follow guidance issued by the Centers for Disease Control in the workplace. In the April 9 updated guidance, the EEOC further refined its previous guidance, and added additional guidance to employers for avoiding discrimination in the workplace and reasonably accommodating employees with disabilities under pandemic conditions. The EEOC’s guidance can be found [here](#).

## **Final Takeaways**

As with all other aspects of the COVID-19 pandemic response, laws are rapidly evolving. Please reach out to your Spencer Fane attorney if you have questions on how this new act affects your business or organization.

This blog post was drafted by [Helen Holden](#). She is an attorney in the Spencer Fane LLP Phoenix, Arizona office.