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GOVERNOR WOLF EASES COVID-19 RESTRICTIONS FOR BUSINESSES

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On April 4, 2021, Governor Wolf amended his Order of November 23, 2020, which established targeted mitigation requirements for businesses in the Commonwealth of Pennsylvania. The [Amended Mitigation Order](#) eases many of the restrictions imposed prior to the Thanksgiving holiday. The amended restrictions include:

TELEWORKING

Teleworking is no longer required, but businesses are strongly encouraged to conduct their operations remotely, in whole or in part, through individual teleworking arrangements. Businesses that choose conduct to in-person operations must comply with the Amended Mitigation Order.

OCCUPANCY LIMITS

The Amended Mitigation Order increases occupancy limits for businesses in the following industries:

- Retail entertainment businesses (museums, amusement, casinos, theaters, malls, etc.), may operate at up to 75% of the maximum capacity stated on the applicable certificate of occupancy at any given time, unless hosting and event or gathering subject to separate Requirements for Events and Gatherings.
- Gyms and fitness facilities are permitted to continue indoor operations at up to 75% of occupancy, but should continue to prioritize outdoor physical fitness activities. Masks continue to be required for both indoor and outdoor activities.
- Personal care services (spas, saunas, tattoo parlors, massage therapists, hair salons, nail salons, barbershops), may operate at up to 75% occupancy. Providing service by appointment is highly encouraged.

BARS, RESTAURANTS AND PRIVATE CATERED EVENTS

On May 27, 2020, the Governor issued Guidance for businesses in the restaurant industry which restricted occupancy limits and bar service, and required that purchases of alcohol be accompanied by a meal. That Guidance remains in place, but has been updated as follows:

- Bar service is permitted as long as physical distancing, masks and other required mitigation measures are in place. Bar service may only be provided to seated patrons. Take-out sales of alcohol for the purpose of off-site consumption are permitted.
- Restaurant and catered event occupancy is limited to 50%, unless hosting an event or gathering subject to separate Requirements for Events and Gatherings. Restaurants

enrolled in the Open and Certified in Pennsylvania Program may increase occupancy limits to 75%.

- All businesses in the retail food service industry may provide take-out and delivery sales of food, and both indoor and outdoor dine-in and bar service. Physical distancing, masks and other mitigation measures are required. On-site dining may only be provided to seated patrons. Take-out sales of alcohol for the purpose of off-site consumption are permitted.

REQUIREMENTS FOR EVENTS AND GATHERINGS

The Amended Mitigation Order also increases the occupancy limits for events and gatherings, as follows:

- Indoor events and gatherings are limited to 25% maximum occupancy based on the occupancy limit required by the National Fire Protection Association (NFPA) Life Safety Code.
- Outdoor events and gatherings are limited to 50% of maximum occupancy.

ONGOING MITIGATION REQUIREMENTS

The remaining mitigation measures required under the Governor's November 23, 2020 Targeted Mitigation Order remain in effect. These include:

Enhanced Cleaning Measures

- Alter hours of service to provide sufficient time to clean;
- Close off areas visited by a person who has a case of COVID-19; open windows and doors and provide ventilation; wait 24 hours before beginning cleaning and disinfection; and
- Wipe down carts and handbaskets; stagger checkout lanes and clean check out areas.

Mitigation Measures

- Conduct temperature checks before employees enter the business.
- Stagger work start and stop times and break times;
- Provide sufficient space for employees to maintain social distancing of 6 feet while on break;
- Limit persons in common areas;
- Conduct meetings and trainings virtually and, if meetings must be held in person, limit the number of individuals in accordance with the limitations outlined in the Order;
- Provide employees access to regular handwashing with soap, hand sanitizer and disinfectant wipes;
- Provide and require that employees wear face coverings during their time at the business, except while on break, in accordance with the Department of Health's November 17 Updated Order Requiring Universal Face Coverings ("Universal Masking Order");
- Have a sufficient number of employees to perform all mitigation measures and to enforce social distancing;
- Prohibit non-essential visitors from entering the business; and
- Make employees aware of these required procedures, in English and their native or preferred language.

Contact Tracing

- To the extent possible, businesses are required to identify employees and customers who were in close contact with a person with COVID-19 from the period 48-hours before symptom onset (or 48 hours prior to test if asymptomatic), to the time the person isolated.
- Businesses must promptly notify employees who were close contacts of any known COVID-19 exposure at the business premises.

Businesses Serving the Public

- Require social distancing and provide markings and/or signage showing six foot distances;
- Post signage mandating face coverings and distancing;
- Post maximum capacity for facility;
- Arrange aisles to be directionally one-way;
- Place hand sanitizer at high contact locations;
- Designate a COVID-19 compliance officer;
- Install plexiglass shields at registers and check-out areas and close check-out lines as needed to maintain distancing;
- Provide for curbside pick-up and delivery options;
- Designate a specific time for high-risk and elderly persons to use the business at least once per week; and
- Require individuals entering the business to wear face coverings in accordance with the Universal Masking Order.

EMPLOYEE ISOLATION AND QUARANTINE

Employers must continue to comply with the following isolation and quarantine requirements outlined in the November 23, 2020 Targeted Mitigation Order:

- An employee who has symptoms of COVID-19 before reporting to work should notify the employee's supervisor and stay home.
- An employee who becomes sick during the workday must be sent home immediately.
- An employee who is diagnosed with or tests positive for COVID-19 may no longer work at an in-person business, even if asymptomatic, and must isolate.
- An employee who is a close contact of a person diagnosed with COVID-19, may not continue to work at an in-person business and must quarantine, subject to the updated guidance for vaccinated individuals.

On March 16, 2021 the Pennsylvania Department of Health updated its isolation and quarantine guidance to address individuals that have received the COVID-19 vaccination. Under that guidance, the following isolation and quarantine requirements must be followed:

Employees with Confirmed or Suspected COVID-19

- May not report to work/must be sent home.
- Must isolate at home for at least 10 days.
- May end isolation once the following conditions have been met:
 - At least 10 days have passed since symptoms first appeared; and
 - At least 24 hours have passed since last fever without the use of fever-reducing medications; and
 - Symptoms (cough, shortness of breath) have improved.

Close Contacts Who Are Not Fully Vaccinated

- May not report to work/must be sent home.
- Must quarantine:
 - Quarantine can end on Day 10 *without testing* if no symptoms have been reported during daily monitoring, however, it is recommended that quarantine continue through Day 14.
 - Quarantine can end on Day 7 *with testing* if no symptoms have been reported during daily monitoring and the test specimen was collected on or after Day 5.
- If symptoms develop, the employee must isolate in accordance with the isolation guidelines.

Close Contacts Who Are Fully Vaccinated

- An individual is considered fully vaccinated as follows:
 - Two weeks after they receive the second dose in a two dose vaccine series (Moderna, Pfizer).
 - Two weeks after they receive one dose of a single dose vaccine (Johnson & Johnson).
- An employee that is fully vaccinated and is exposed to COVID-19 or identified as a close contact does not need to quarantine *if the employee remains asymptomatic*.
- If a fully-vaccinated employee develops symptoms after exposure to COVID-19, the employee must isolate in accordance with the isolation guidelines.

CONGRESS PASSES ADDITIONAL COVID RELIEF MEASURES IMPACTING BUSINESSES

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (“ARPA”), which extends several COVID relief measures and imposes new requirements on businesses. These measures include:

COBRA PREMIUM ASSISTANCE

ARPA provides 100% premium assistance for COBRA continuation coverage for up to six (6) months from April 1, 2021 through September 30, 2021.

Employees Entitled to COBRA Subsidy

A COBRA subsidy is available to “assistance eligible individuals” (“AEIs”), which is defined as employees who were involuntarily terminated or experienced a reduction in hours, as well as their covered dependents. An employee may become an AEI in one of two ways:

1. An employee qualifies for COBRA at any time from April 1 through September 30, 2021. This includes:
 - a. Former employees who timely elected COBRA prior to April 1; AND
 - b. Current employees who separate employment after April 1 and elect COBRA.
2. An employee was entitled to COBRA prior to April 1, is still in the 18-month COBRA period, and either:
 - a. Failed to elect COBRA; OR
 - b. Timely elected COBRA but dropped coverage prior to April 1.

AEIs cannot receive a subsidy once they become eligible for other employer coverage or Medicare, or beyond their maximum COBRA coverage period (18 months). An employee that fails to notify the plan of a disqualifying event will be subject to penalties.

Plan Notice Requirements

For employees who separate employment after April 1, Plan Administrators must update their COBRA election notification to ensure that employees are informed about the new subsidies.

For employees who separated employment prior to April 1 and either failed to elect COBRA or discontinued COBRA, Plan Administrators must issue an election notification providing for a 60 day special election period. Formerly separated employees may elect COBRA as of April 1, 2021, however ARPA does not extend the 18-month period for which an employee can receive COBRA.

Finally, Plan Administrators must notify AEIs in writing when the COBRA subsidized coverage is set to expire. The Department of Labor has been directed to issue model notices that comply with ARPA's new requirements.

Tax Credits and Refunds

Similar to the paid leave benefits provided under the Families First Coronavirus Response Act (FFCRA), COBRA subsidies are funded through tax credits and refunds. The entity responsible for covering the up front cost of COBRA premiums depends on the type of insurance plan and how the plan is funded:

- For self-insured plans, the employer is responsible for funding the COBRA premiums and applying for tax credits/refunds to offset the obligation.
- For fully-insured plans, the insurance company is responsible for funding the COBRA premiums and applying for tax credits/refunds to offset the obligation.
- For multi-employer plans, the plan (the entity to whom premiums are due) is responsible for funding the COBRA premiums and applying for tax credits/refunds to offset the obligation.

The responsible entity may claim a tax credit against the Medicare portion of FICA (1.45% of an employee's wages). To the extent that up front premium costs exceed the Medical tax, a responsible entity can request a refund. The IRS has not yet outlined how credits and refunds will be processed.

Employer Action Items

Employers should consult with their insurance carrier and/or Plan Administrator to ensure that appropriate steps are being taken to comply with ARPA's COBRA premium assistance requirements. Employers may need to provide assistance in identifying AEIs that separated employment within the 18-month period prior to April 1, 2021. Employers that are self-insured must prepare for additional up front costs associated with COBRA premium assistance, and should consult with their tax advisor concerning credits and refunds.

EXTENSION AND EXPANSION OF FFCRA TAX CREDITS

Under the Families First Coronavirus Response Act (FFCRA), employers with fewer than 500 employees were required to provide certain COVID-related paid leave benefits to employees through December 31, 2020. These benefits included:

- Emergency Paid Sick Leave (“EPSL”): Two (2) weeks (up to 80 hours) of paid leave for six qualifying COVID-related reasons.
- Expanded Family and Medical Leave (“EFML”): Ten (10) additional weeks of partially paid leave to individuals who were unable to work because their child’s school or place of care was closed due to COVID.

In exchange for providing paid leave benefits, private employers were permitted to take a credit against payroll taxes in an amount equal to: FFCRA wages, qualified healthcare expenses, and the employer portion of Medicare tax imposed on the paid leave wages. The employer portion of social security tax on the wages was also waived.

Extension of Payroll Tax Credits Through September 30, 2021

FFCRA’s paid leave mandate expired on December 31, 2020. On December 21, 2020, as part of the 2020 Tax Relief Act, the payroll tax credit created by FFCRA was extended through March 31, 2021 on a voluntary basis.

Under ARPA, Congress has again extended the payroll tax credit through September 30, 2021, to private employers with fewer than 500 employees who voluntarily provide COVID-related paid leave in accordance with the FFCRA framework. While employers are no longer required to provide FFCRA leave benefits, those who elect to continue offering paid leave may continue to take a tax credit for the first three quarters of 2021.

Additional Qualifying Reasons for BOTH EPSL and EFML

Under ARPA, Congress expanded the list of qualifying reasons that an employee may take both EPSL and EFML to include:

- The employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 and such employee has been exposed to COVID-19 or the employee’s employer has requested such test of diagnosis;
- The employee is obtaining a COVID-19 vaccination; or
- The employee is recovering from any injury, illness or condition related to a COVID-19 vaccination.

Additional Qualifying Reasons for EFML

Originally, the EFML portion of FFCRA only permitted an additional ten (10) weeks of partially paid leave to individuals who were unable to work because their child’s school or place of care was closed due to COVID. Under ARPA, employers that voluntarily provide EMFL must now permit leave for any of the six (6) original qualifying reasons provided for EPSL.

New EPSL Leave Period

As of April 1, 2021, employers voluntarily providing FFCRA leave must recognize a new leave period for EPSL. An employee that already received two (2) weeks of EPSL in 2020 qualifies for a new two (2) week leave entitlement on April 1, 2021.

Addition of Non-discrimination Requirement

ARPA imposes a new non-discrimination obligation on employers that voluntarily continue offering FFCRA benefits. An employer is not eligible to receive a tax credit if its paid leave program discriminates in favor of highly compensated employees, full-time employees, or on the basis of tenure.

EMPLOYEE RETENTION TAX CREDIT

The Employee Retention Credit (“ERTC”), created under the CARES Act, is a refundable credit against certain employment taxes equal to 50% of the qualified wages an eligible employer pays to employees after March 12, 2020. The ERTC originally expired on January 1, 2021, but was extended by Congress through July 1, 2021.

Under ARPA, the ERTC has, once again, been extended through December 31, 2021. The amount of the credit has also been increased to \$7,000/quarter (\$28,000/year).

EXTENSION OF UNEMPLOYMENT COMPENSATION BENEFITS

Finally, ARPA extends several current federal unemployment programs originally created by the CARES Act and extended by the Consolidated Appropriations Act:

Pandemic Unemployment Assistance (PUA) extended through September 6, 2021

- PUA provides benefits to individuals who are unemployed due to COVID and who are not eligible for regular UC benefits such as self-employed individuals, independent contractors, gig workers, those seeking part-time employment, and those who have exhausted their regular UC benefits.
- Benefit weeks have been increased from 50 weeks to 79 weeks.

Extends Federal Pandemic Unemployment Compensation (FPUC) extended through September 6, 2021

- FPUC provides an additional \$300/week to individuals receiving state UC benefits.

Extends Pandemic Emergency Unemployment Compensation (PEUC) extended through September 6, 2021

- PEUC provides additional assistance to individuals who have exhausted their state UC benefits.
- Benefit weeks have been increased from 24 weeks to 53 weeks.

Mixed Earner Unemployment Compensation (MEUC) extended through September 6, 2021

- Individuals who earn a combination of traditional W-2 employment wages and at least \$5,000 self-employment income in 2019 will receive an additional \$100/week.

Other Provisions

- ARPA provides a waiver of federal taxes on the first \$10,200 in UC benefits received in 2020 for individuals who earn less than \$150,000.

If you have questions about your obligations under the Governor’s Amended Order or the American Rescue Plan Act, BCGL’s Employment Team of [Theresa Mongiovi](#) and [Angela Sanders](#) are available to assist you.