

# Welcome to Pillsbury's Industry Insights: Retail

October 7, 2020

The Pillsbury logo, featuring the word "pillsbury" in a lowercase, sans-serif font. The letters are a reddish-brown color. The logo is positioned in the bottom right corner of the slide, set against a white rectangular background.

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Paula Weber  
Partner



Laura Latham  
Senior Counsel



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Paula Weber

Partner

# Agenda

- Wage-Hour Risks in the COVID Era
- Paid Sick Leave & FFCRA
- Workplace & Customer Safety
- EEO Considerations

# Wage & Hour Issues – California Peculiarities

- Extraterritorial Application of California Labor Code
  - United Airlines & Delta Airlines cases
- Contingent Scheduling (Tilly's)
- “De Minimis” Work/Security Checks (Apple)

# Wage & Hour Issues – California Peculiarities (cont'd)

- Unlimited vacation policies (McPherson)
- Release of PAGA claims (Reins)

# Paid Sick Leave Patchwork

- FFCRA
- Pre-COVID State and Local PSL
- State and Local Emergency PSL and FFCRA “gap-fillers”
- Existing Employer Policies and Practices
- PSL laws may require payment, but some laws do not permit forced use of PSL by employer

# Families First Coronavirus Response Act (“FFCRA”)

- Federal statute imposing paid leave obligations on employers
- Applies to employers with fewer than 500 U.S. employees
- In effect April 1, 2020 – December 31, 2020
- Sets the floor for statutory leave entitlement
- Substantial penalties for noncompliance
- Two Entitlements to Paid Leave Under the Act:
  - (1) Emergency Paid Sick Leave Act (EPSL)
  - (2) Emergency Family and Medical Leave Expansion Act (EFMLEA)

# Expansion of CFRA – Effective 1/1/21

- Covers employers with 5 or more employees
- Covers leave to care for grandparents, grandchildren and siblings
- No exception for reinstatement of key employees
- If employer and employee both mother and father must give them 12 weeks for baby bonding

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Laura Latham

Senior Counsel

# Workplace & Customer Safety

- Follow CDC/OSHA guidance and state/local resources
  - Many require opening plans/postings
  - Some require prescreening of employees; density limitations
- Adopt/enforce regular handwashing and personal hygiene
- Review and modify access, layouts, equipment, barriers signage and point-of-sale protocols
- Develop checklist or action plan for handling symptomatic employees in the workplace and communications protocols

# Workplace Safety: Sick Employees

- Ill or symptomatic employees should be required to tell employer ASAP
- Send the worker home -- until tested and cleared, or isolation time has passed
- Deep clean if they came to work (closing to the public if necessary)
- Notify co-workers who had direct contact with employee and advise of signs of the virus
- Consider whether other employees need to be sent home as well to self-quarantine
- Raises PR and communications issues; best practice is to develop communications and protocols now

# Beware of Enhanced State Safety Protections

- E.g., Recent California Legislation:
  - AB 685 [Public Health Notice]
    - Requires public and private California employers to provide detailed notices to employees when there is a COVID-19 exposure in the workplace, and to provide notice to local public health departments for COVID-19 “outbreaks”
  - SB 1159 [Workers’ Compensation Presumption]
    - Extends prior Executive Order
    - California workers who contract COVID-19 are presumed to have a workplace injury covered by the workers’ compensation system.
    - Establishes a “rebuttable presumption” for COVID-19 claims for certain first responders (police and fire) and specified health care workers.
    - For all other employers, SB 1159 creates a “rebuttable presumption” for workers’ compensation for COVID-19 for “outbreaks”
- Similarly, Virginia has adopted regulations requiring employers to notify employees, the Virginia Department of Public Health, the building owner, and others of possible workplace exposure within 24 hours of learning of the exposure to a known case.

# EEO Risks

- Federal and State EEO laws not suspended in COVID-19 era
  - Heightened concerns re ADA (disability discrimination)
  - Heightened risks of age and national origin discrimination
- ADA medical confidentiality rules still apply
- Employer rights for medical exams are broadened in a pandemic

# Potential EEO Claims by Employees Offered Work

- Employees with chronic health conditions entitled to accommodations due to heightened risk
- Leave beyond FFCRA may be a reasonable accommodation
- But also consider how to deal with employees who want to return to work despite being high risk
- Potential gender discrimination issues as related to childcare responsibilities

# EEO & WARN Issues

- WARN planning required if new Furloughs/Layoffs considered
  - WARN issues if longer than 6 months or turning furloughs into layoffs
- Returning Workers on Furlough/Layoff
  - Risk of discrimination/retaliation claims based on selection
  - CBA's/ local ordinances requiring bringing back by seniority (e.g. LA)

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