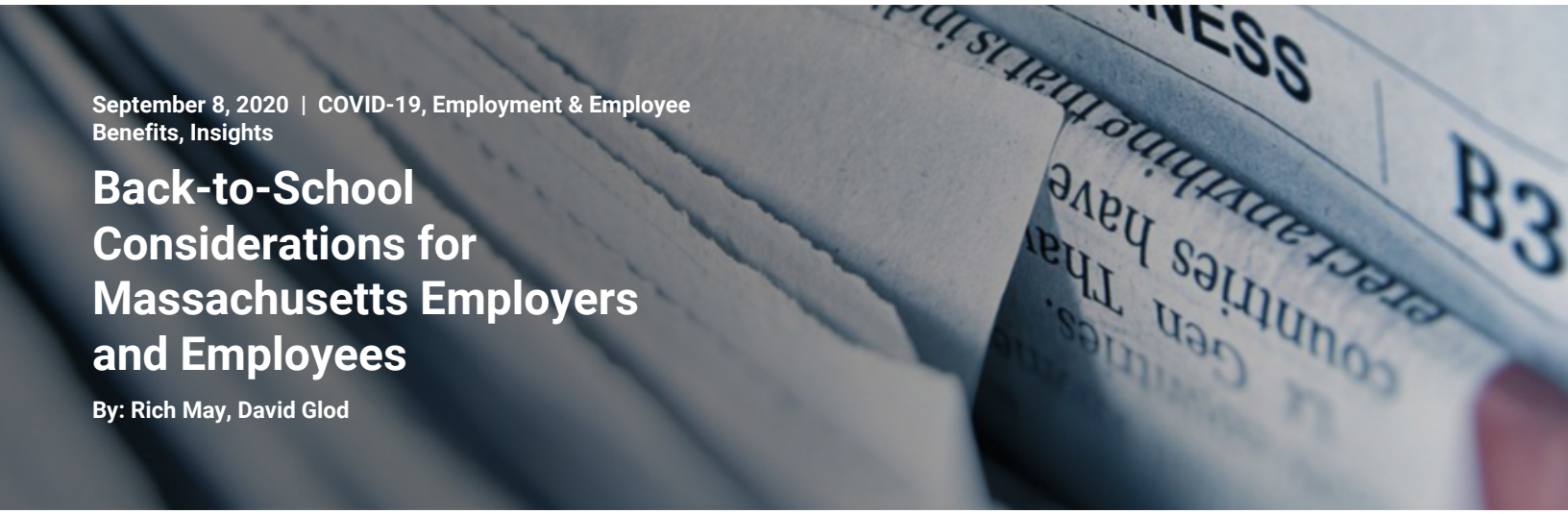

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Back-to-School Considerations for Massachusetts Employers and Employees

By: Rich May, David Glod

As most schools begin reopening for the fall semester, often with some form of remote learning, many parents will need to take time out of their day to support their children's educational needs. For parents who are also working, this may impact their availability for work. This post summarizes some of the leave laws that Massachusetts employers and employees will need to navigate in this context.

Paid Leave Under the FFCRA

As we discussed in an earlier post, the Families First Coronavirus Response Act ("FFCRA") implemented two new types of employee leave as a result of COVID-19: emergency paid sick leave, and an emergency expansion of previously existing family and medical leave.

Emergency paid sick leave is available to employees who are exhibiting COVID-19 symptoms or who have been advised by a medical provider or public agency to self-quarantine, who need to care for a family member who is exhibiting symptoms or is self-quarantining, or who need to care for a child whose school or child care provider has been closed as a result of COVID-19. Eligible employees can take up to two weeks of paid leave prior to December 31, 2020. The amount of these leave payments may be limited based on the reason for the leave.

Emergency family and medical leave is available to employees who need to care for a child whose school or child care provider has been closed as a result of COVID-19. This leave is unpaid for the first two weeks (overlapping with paid sick leave) and then is paid for up to an additional 10 weeks at two-thirds of the employee's usual pay, up to $200/day.

School Reopening Models

Most schools are reopening on either a fully remote learning model, with no in-person attendance, or a hybrid model involving some remote and some in-person attendance.

If an employee's child's school is operating on a fully remote learning model, the employee

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will be entitled to take paid leave as needed to care for the child provided that no other suitable person is available to do so. The Department of Labor has said this will be treated as a school closure for purposes of the FFCRA.

For schools operating on a hybrid model, with students attending in-person on certain days, the answer is more complicated. Employees are not entitled to use leave under the FFCRA intermittently. However, employers and employees may voluntarily agree to such an arrangement, and the Department of Labor "encourages employers and employees to collaborate to achieve maximum flexibility." The Department of Labor has published a Q&A addressing this and other specific questions.

If an employee's child's school is open, the child is not exhibiting symptoms and has not been advised to self-quarantine, but the employee elects to keep the child home, FFCRA leave will generally not be available. Depending on the circumstances, certain other remedies including unpaid leave might be available.

Because the applicable leave laws and guidance are complex, employers and employees are encouraged to consult with an attorney for guidance on any specific set of facts.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney David Glod.

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