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PHILADELPHIA EXPANDS PUBLIC HEALTH EMERGENCY LEAVE FOR ELIGIBLE EMPLOYEES

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On Thursday, March 18, 2021, Philadelphia City Council voted unanimously to amend the Philadelphia Code’s Promoting Healthy Families and Workplaces law, to once again grant two weeks of COVID-19-related [Public Health Emergency Leave](#) (“PHEL”) to eligible employees throughout Philadelphia (the “2021 Act”). Mayor Jim Kenney signed the [bill](#) on March 29, 2021 and it became effective immediately upon signing. [The full notice can be viewed here.](#)

Philadelphia originally passed a PHEL law in September 2020, which expired by its terms on December 31, 2020 (the “2020 Act”). Our discussion of the 2020 Act can be found [here](#).

The new 2021 Act explicitly “deleted and replaced” the 2020 Act, meaning that the provisions of the 2020 Act are no longer operative. While the new 2021 Act provides paid leave for similar reasons as the 2020 Act, there are key differences between the bills that employers in Philadelphia should look out for, including, what employers are covered, what employees are covered, and what types of absences are covered.

What Employers are Covered by the 2021 Act?

Under the 2021 Act, covered employers include individuals, partnerships, associations, corporations, business trusts, or any person or group acting directly or indirectly in the interest of an employer to any employee, with 50 or more employees.

Who is Eligible for 2021 Public Health Emergency Leave?

The law provides that employees are eligible for PHEL if they have been employed for 90 or more days for the employer and (i) work within Philadelphia; (ii) normally work within Philadelphia but are currently teleworking from another location as a result of COVID-19; or (iii) work from multiple locations provided that 51% or more of their time is spent working within Philadelphia. *This is a significant difference from the eligibility requirements for leave under the 2020 Act.*

What is Public Health Emergency Leave?

Under the 2021 Act, the reasons an eligible employee may use PHEL have been expanded to account for employees needing time off from work to receive vaccinations or recover from vaccine-related symptoms. Specifically, employees may take PHEL for any of the following six (6) reasons:

- **Exposure to COVID-19.** When a public official, public health authority, health care provider, or an employer determines that an employee’s presence at the workplace or in the community would jeopardize the health of others because of an employee’s exposure to COVID-19 or

because the employee is exhibiting symptoms, regardless of whether the employee has been diagnosed with COVID-19.

- **To Care for Family Member Exposed to COVID-19.** When an employee needs to care for a family member that has had an exposure or is exhibiting symptoms in the same circumstances as No. 1.
- **Self-Isolation and Care.** When an employee needs to self-isolate because the employee is diagnosed with COVID-19, is experiencing symptoms of COVID-19, or is otherwise seeking or obtaining a medical diagnosis, care, or treatment due to such symptoms.
- **To Care for Family Member in Self Isolation.** When an employee must care for a family member who is diagnosed with COVID-19, is experiencing symptoms of COVID-19, or is otherwise seeking or obtaining a medical diagnosis, care, or treatment due to such symptoms.
- **Child Care.** When an employee must care for a child if the school or place of child care is closed, or a childcare provider is unavailable, due to precautions taken in accordance with the public health emergency response.
- **Immunization and Related Conditions.** When an employee needs to obtain a COVID-19 vaccination or an employee needs to recover from any injury, disability, illness or condition related to such vaccination.

If an employee requests PHEL, such leave must be provided to the employee immediately, without any waiting period and irrespective of accrual requirements. An employee should be entitled to use this leave until one week following the termination or suspension of the public health emergency.

How Much Public Health Emergency Leave is Available?

Under the 2021 Act, an employer must provide 80 hours of PHEL for employees who work 40 hours or more per week. For those employees who work less than 40 hours a week, an employer must provide PHEL in an amount equal to the amount of time the employee works during a two-week period. The law provides for a specific calculation to determine the average hours worked for employees whose schedules vary from week to week.

What if an Employer Already Offers Paid Leave?

Some – but not all – employers that already offer paid leave benefits to employees may not be required to provide the additional PHEL under Philadelphia law; however, employers should operate carefully here and seek legal counsel to determine if they are exempt. The 2021 Act provides that PHEL shall ordinarily be in addition to (1) all other paid leave benefits offered by an employer and/or (2) any leave an employee has previously received under the 2020 Act. An employer may not require an employee to use other paid leave benefits before an employee can use PHEL.

However, if an employer has an existing policy that provides at least 160 hours of paid time off (though not designated sick leave) in 2021 that can be used for the same purposes as PHEL, then such an employer need not provide the additional PHEL benefits under the 2021 Act. The threshold is even lower for employees who perform the majority of their work remotely. Specifically, employers do not have to provide additional PHEL to employees who perform the majority of their work through telework so long as their employers provide them at least 80 hours of paid leave in 2021 that can be used for the same purposes as PHEL.

The 2021 Act also provides that PHEL can run concurrently with certain employer-provided paid leave as well as any paid leave required under Federal or state law. If an employer adopted a policy on or after March 6, 2020 that provides for additional paid time off for use during the COVID-19 Pandemic, employers may substitute leave under such a policy for the leave required under the 2021 Act. Furthermore, to the extent that there are Federal or state laws that require employers to provide paid leave or paid sick time related to COVID-19, employers may also substitute leave under such a Federal or state law with the 2021 Act to the extent permitted. PHEL is not intended to run concurrently with leave available pursuant to Philadelphia's Paid Sick Leave law, so employees must be given a choice as to which of the Philadelphia leaves they seek to utilize if both would provide coverage for the time needed away from work.

Are There Any Other Notable Provisions?

Employers should be aware that the 2021 Act contains a right to return-to-work provision and a non-retaliation provision. Furthermore, the 2021 Act creates a private cause of action for employees alleging violations which does not require the employee to exhaust any administrative remedies.