



SCA Compliance Challenges in a COVID-19 Environment

Nichole Atallah and Sarah Nash

May 5, 2020

About PilieroMazza

PilieroMazza – a business law firm – serves as a strategic partner to government contractors and commercial businesses from across the United States.

We deliver results for our clients by implementing legal and business solutions that take the client's best interests into consideration. Moreover, PilieroMazza's efficient operational structure and lean approach to staffing matters translates into competitive pricing for our clients, while providing the highest standard of client service and legal acumen.

PilieroMazza is privileged to represent clients in the following areas:

- Audits & Investigations
- Business & Corporate Law
- Cybersecurity & Data Privacy
- False Claims Act
- Government Contracts Law
- Mergers & Acquisitions
- Intellectual Property & Technology Rights
- Labor & Employment Law
- Litigation & Dispute Resolution
- Native American Law
- Small Business Programs & Advisory Services
- Private Equity & Venture Capital

Sign up for our newsletters and blog at
www.pilieromazza.com



Nichole Atallah



Nichole Atallah, Esq.
Partner, PilieroMazza PLLC
natallah@pilieromazza.com
888 17th Street, NW
11th Floor
Washington, DC 20006

Nichole Atallah counsels clients in a broad range of employment matters, including compliance with Title VII, ADA, ADEA, FLSA/wage and hour, FMLA, wrongful termination, and reduction in force. She advises clients in general business matters, including interpreting and drafting employee compensation and benefit arrangements, confidentiality, non-compete and non-solicitation agreements, as well as separation agreements.

Ms. Atallah has substantial experience assisting government contractors with FAR Part 22 compliance, including the Davis Bacon Act, the Service Contract Act, and Equal Employment Opportunity requirements specific to government contractors. Additionally, she has advised tribally-owned entities on unique labor and employment issues, including Native American preferences, sovereign immunity questions, and Title VII jurisdiction.

Sarah Nash



Sarah Nash, Esq.
Associate, PilieroMazza PLLC
snash@pilieromazza.com
888 17th Street, NW
11th Floor
Washington, DC 20006

Sarah Nash advises clients on a wide variety of labor and employment issues including the Fair Labor Standards Act, the National Labor Relations Act, Office of Federal Contract Compliance Programs regulations, anti-discrimination law, and whistleblower law. She provides employers counsel regarding terminations, non-disclosure agreements, personnel issues, wage and hour issues, and employment practices and policies. Ms. Nash has also advised tribally-owned entities on unique labor and employment issues, including Native American preferences, sovereign immunity questions, and Title VII jurisdiction.

Ms. Nash has litigated cases before federal and state courts, including representing clients at arbitration, administrative proceedings, and mediation. She has participated in litigation in a number of practice areas, including labor and employment, administrative procedure, constitutional law, trademark law, and appellate practice.

Overview

Avoiding SCA pitfalls in COVID-19 climate:

- Impact of the FFCRA on SCA compliance
- Influence of the CARES Act on SCA compliance
- Vacation payouts for furloughed personnel
- Audit risk and exposure

Families First Coronavirus Response Act (FFCRA)

- Effective April 1 – December 31, 2020
- Employers with fewer than 500 employees
- Requires employees be provided with paid leave for COVID-19 qualifying reasons
 - Emergency Paid Sick Leave
 - Emergency Family Leave

FFCRA (Cont'd)

- Paid leave capped at \$200 or \$511 depending on the reason for leave (plus health care benefits)
- 100% reimbursable.
- Health care benefits required to be maintained
- Some limited exceptions for health care workers and employers with fewer than 50 employees
- No FFCRA leave obligation if work is stopped

SCA Crossover

- Does FFCRA require employees paid H&W Benefits?
 - Even versus odd wage determination
 - FMLA H&W requirements
 - Method of H&W payment?
 - Cash in lieu
 - Health insurance
 - Other benefits (i.e. retirement, STD, life insurance)
- What if employees can perform work remotely?
- State and contract specific requirements?
 - ✓ Is Sick Leave for Federal Contractors Implicated?

Compliance Considerations

- May not discharge, discipline, or otherwise discriminate against any employee who lawfully takes FFCRA leave
- Recordkeeping requirements:
 - The name of your employee requesting leave;
 - The date(s) for which leave is requested;
 - The reason for leave; and
 - A statement from the employee that he or she is unable to work because of the reason.
- Failure to provide EPSL is subject to the enforcement provisions of the FLSA
- Failure to provide EFMLA is enforced under the FMLA, however employers not otherwise subject to FMLA will not be subject to private right of action

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

- **Paycheck Protection Program** – Loans of up to \$10 million (or 2.5x average monthly payroll) to small businesses with potential for 100% loan forgiveness. Business necessity considerations.
- **Section 3610** – Provides agencies discretion to modify contracts in order to reimburse contractors at minimum applicable contract billing rates for paid leave. No double-dipping.
- **Employee retention credit** – Provides up to \$5,000 per employee to businesses impacted by COVID-19. Not available to PPP loan recipients.

SCA Crossover

- Have you experienced a slow-down or stop in work?
- Calculating PPP payroll expenses?
- What rate of pay must be applied?

Furloughing SCA Employees

- Vacation payout considerations
- Advancing employee leave
- Breaks in service
- Unemployment eligibility

Collective Bargaining Agreements

- Furloughs – Follow the CBA
- Pay and Benefits under FFCRA
 - Benefits other than healthcare
- Pay and Benefits Under PPP
- Impact Bargaining

Questions?



Nichole Atallah
Partner
PilieroMazza PLLC
natallah@pilieromazza.com



Sarah Nash
Associate
PilieroMazza PLLC
snash@pilieromazza.com

Disclaimer

This communication does not provide legal advice, nor does it create an attorney-client relationship with you or any other reader. If you require legal guidance in any specific situation, you should engage a qualified lawyer for that purpose. Prior results do not guarantee a similar outcome.

Attorney Advertising

It is possible that under the laws, rules, or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.