

# Paul DeCamp Quoted in "Punching In: Virus Relief Requires Big Decisions from Employers"

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**Paul DeCamp**, Member of the Firm in the Employment, Labor & Workforce Management practice, in the firm's Washington, DC office, was quoted in *Bloomberg Law Daily Labor Report*, in "Punching In: Virus Relief Requires Big Decisions from Employers," by Ben Penn, Chris Opfer, and Jaclyn Diaz.

Following is an excerpt:

*Ben Penn:* There won't be anything humorous about April Fools' Day this year for millions of workers and their employers. Some companies are targeting April 1 or shortly thereafter as the deadline to make sensitive decisions on how to reduce their workforce due to the coronavirus pandemic.

The Labor Department's paid leave rules for coronavirus-related relief take effect Wednesday at businesses with fewer than 500 workers. Employers get full tax credit reimbursements for up to 12 weeks of paid sick leave and partially paid family leave they'll be required to provide. But cash flow freezes caused by stay-at-home orders and a downward trending economy likely will lead some businesses to decide it's easier to issue layoffs or furloughs than to keep workers on the payroll if they can't do their jobs because of the virus.

Before executives choose whether to terminate staff, issue temporary furloughs with a set return date, or opt for indefinite layoffs, they're pressuring DOL for clearer guidance on which workplace scenarios would qualify for leave. If you're like me, you're hitting refresh on this page and this one by the minute,

## People



Paul DeCamp  
Member of the Firm  
Wage and Hour  
Washington, DC  
202-861-1819  
PDeCamp@ebglaw.com

## Focus Areas

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## Trending Issues

Coronavirus Resource Center

because the Wage and Hour Division keeps updating the list. ...

*Chris Opfer:* While the DOL is crafting those new regulations, some companies are taking a headcount.

Employers with 500 or more workers are exempt from the new sick and family leave requirements. Although the department last week offered some insight on who's in and who's out when it comes to that count, there are still plenty of questions. That includes how to treat subsidiaries, affiliates, and other related entities.

The uncertainty could put some companies in a tough spot, Epstein Becker attorney Paul DeCamp told me. If you keep some employees out of the count and give your workers the paid leave, there's a possibility that the Internal Revenue Service says you don't get the new Covid-19 paid leave tax credit because you're actually above the 500-employee threshold. Overcount and determine that you're exempt and you could be looking at a lawsuit for failure to provide the paid leave.

"If you're in that boat, the better story is 'We erred on the side of the leave and we're going to trust that the IRS is not going to want to get out there and start hammering employers,'" DeCamp said.