

An Employer's Guide to COVID-19 Compliance

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The FFCRA is Evolving!

- Effective Date: April 1, 2020
- DOL Issues employer poster on FFCRA
 - Sick Leave
 - FMLA Leave
- Employees laid off on or after March 1, 2020 and rehired - FMLA eligible

The FFCRA is Evolving! (cont.)

- 50 employee threshold for FMLA/Sick Leave
- Available?
- FMLA/Sick Leave - staying home with minor children due to school and daycare closures
- Sick Leave - employee caring for an 'individual' what does that mean?
- Self-quarantine - what is that?

The FFCRA is Evolving! (cont.)

- What is a “health care provider” for purposes of the exceptions to EPSLA and EFMLEA?
- My full-time employees work 37.5 hours per week. Is that what they get or is it 40 hours?

Where Are We Going With All of This?

- Establish your “Pandemic Plan”
- Set your policies on the application of the
 - EFMLEA
 - EPSLA
 - And the key definitions
- Create Amendment for FMLA Policy

Where Are We Going With All of This?

(cont.)

- Create Policy of EPSLA
- Create election and operational forms for compliance
- Consider exemption from EFMLEA or EPSLA with DOL Application

Pandemic Emergency Plan

- Every pandemic policy needs:
 - A pandemic plan and response team
 - Instructions for personal hygiene & good health practices
 - Instruction on emergency closings
 - Contingency planning
 - Instructions on pay and leave practices during the crisis
 - Coordination with benefit providers on continuation of benefits
 - Emergency medical procedures

Labor & Employment Issues

Issues to Consider Addressing in a Policy:

- ✓ Best practices to avoid transmission
- ✓ Duty to report travel, exposure or symptoms
- ✓ Asking/requiring employees to stay home who are ill or under a facility access issue
- ✓ Offering alternative work environment
- ✓ Deviations to Attendance Policy
- ✓ Deviations to Leave (paid and unpaid) policies

Labor & Employment

Families First Coronavirus Response Act

- Generally applies to employers with less than 500 employees.
- Generally effective for employment/labor purposes April 1, 2020
- Three Key Parts:
 - 1) Expansion of FMLA rights
 - 2) Emergency Paid Sick Leave
 - 3) Unemployment Eligibility
 - *Also COVID-19 testing coverage under Group Health Plan
- DOL Notices Have Been Published

Labor & Employment

- How is employer defined?
- What if we have less than 500 employees, can we add parent and subsidiary companies together to meet the 500 employee threshold in order to avoid having to follow the Families First Coronavirus Response Act?

Labor & Employment

Yes, if the “Integrated Employer” test is satisfied:

1. Whether there is common management;
2. Whether the entities’ operations are interrelated;
3. Whether there is centralized control of labor relations; and
4. The degree of common ownership/financial control of the entities.

Labor & Employment

- The FFCRA states that if the Emergency FMLA and Paid Sick Time would jeopardize the viability of a business with less than 50 employees, the business could seek an exemption from the FFCRA.
- How can businesses apply for this exemption?
 - Not a lot of guidance yet. Everyone is waiting for the Secretary of Labor to issue regulations describing how and when companies can apply for this exemption.

DOL Notice & Guidance

- Employers subject to the FFCRA must post in conspicuous places on the premises where notices are customarily posted, the DOL's Notice. The DOL Notice can be accessed here:

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

- The DOL Provided Guidance in a Q & A format on March 28, 2020. The DOL Guidance can be accessed here:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

► PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 10 weeks more of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

► ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days* prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

► QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---|---|
| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|---|---|

► ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd



WH1422 REV 03/20

Emergency FMLA Expansion Act

- Expands FMLA coverage to cover all government employers and private sector companies with less than 500 employees for child care during the public health emergency only.
- Employee must have been employed for 30 days to be eligible.
- Emergency FMLA benefit applies to employees who would typically not meet the standard 1250 hours/12 months eligibility required for typical Federal FMLA leave.
- EFMLA coverage is job protected leave to provide *needed* care for a son or daughter under 18 because a school or a place of care (daycare) has been closed or the child care provider is not available.

Emergency FMLA Expansion Act

- No 50 employee threshold for applicability of Expanded FMLA Right
- DOL exception available for employers that would suffer jeopardy to the “viability of the business as a going concern.”
- Allows opt-out for employers of health care workers and emergency responders.

FMLA - Paid or Unpaid

- First 10 workdays of leave - Unpaid (except for substitution of paid leave by employee)
- Remainder of FMLA for emergency child care available at 2/3 of the regular hourly rate of pay the employee for normally scheduled work hours
- Wages are capped at \$200 per day (\$10,000 total) (per employee)

Verification of Need

- Certification requirements for FMLA remain as under current law. Key available questions appear to be:
 - 1) Is person son or daughter of employee under the age of 18?
 - 2) Was the employee unable to work or tele-work?
 - 3) Was the employee *needed to care* for the son or daughter?
- Notice of need for leave is to be provided as soon as practicable.

Emergency Paid Sick Leave Act

- Full-time employees - 80 hours
- Part-time employees - number of hours such employee normally works over a two (2) week period. If variable hours, average over last 6 months.
- Employee chooses what to use first - not the employer - no ordering requirement in taking Paid Sick Leave.
- Allows employer opt-out for health care workers and emergency responders.
- Provides DOL ability to issue regulations exempting small businesses (50 or less) if compliance would “jeopardize the viability of the business as a going concern.”

What Can I Take Paid Sick Leave For?

- 1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19: **PAID at 100%**;
- 2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19: **PAID at 100%**;
- 3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis: **PAID at 100%**;
- 4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2): **PAID at 2/3 of regular rate of pay**;

What Can I Take Paid Sick Leave For? (cont.)

- 5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions-PAID at 2/3 of regular rate of pay; and
- 6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor-PAID at 2/3 of regular rate of pay.

* Wages capped at \$511 per day (\$5,110 total) for 1,2, and 3 above; capped at \$200 per day (\$2,000 total) for 4, 5 and 6 above.

Wisconsin's Safer at Home Order

- On March 24, 2020, Wisconsin Governor Tony Evers mandated a “Safer at Home Order” that mandates all non-essential employers and their suppliers to shut down operations until Friday April 24, 2020.
- The Order provides exemptions for certain employers that the State of Wisconsin deems to be essential.

Common Questions

- Our employee is concerned he could catch the Coronavirus and wants to stay at home. And be paid.
- We want to send an employee home from work because he is exhibiting flu-like symptoms - similar to those we hear are Coronavirus symptoms.
 - Can I keep him out for 14 days? Do I need to provide him Paid Sick Leave? After April 2, 2020.
- Do I have to continue benefits while the employee is off of work?

Common Questions (cont.)

- My child, age 17, is at home because high school is closed - can I take Paid Sick Leave?
- I have directed an employee not to come into work and to self-quarantine because of his travel to Spain. Do I have to provide Paid Sick Leave?
- The pre-employment drug testing site is closed, can I make a conditional offer of employment with the employee getting the test in the next 6 months?

Questions?

