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NEW FEDERAL COVID-19 LEAVE GOES INTO EFFECT

March 31, 2020

[The Leave Provisions of the Families First Coronavirus Response Act \(FFCRA\) Go Into Effect Tomorrow, April 1, 2020.](#)

The FFCRA includes two new leave provisions under federal law for certain absences related to COVID-19, both of which go into effect on Wednesday, April 1, 2020.

This is a rapidly evolving area of the law. The Department of Labor (DOL) continues to update its guidance regarding the FFCRA on its website at: <https://www.dol.gov/agencies/whd/pandemic>. The website includes fact sheets, answers to frequently asked questions, posters, and field assistance bulletins¹. So far, the DOL has answered nearly 60 FAQs about the new law, with more updates expected. To review these answers, visit: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.²

The following is an overview of the new leave provisions that go into effect tomorrow:

[Emergency Paid Sick Leave – Up to 2 Weeks Available](#)

(For all public employers, and private employers with fewer than 500 employees)

Regardless of how long they have been employed, all covered employees are eligible for two weeks (up to 80 hours) of additional paid leave for time that they cannot work (or telework) for specified COVID-19 related reasons. This leave is in addition to any leave provided for under a CBA or employer policy. An employer cannot require an employee to use any other leave first.

¹ Currently, there is one field assistance bulletin posted, which indicates that the DOL “will not bring enforcement actions against any public or private employer for violations of the Act” occurring through April 17, 2020, “provided that the employer has made reasonable, good faith efforts to comply with the Act.” <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1 March 24>.

² Just this weekend, the DOL updated its guidance regarding “healthcare providers” and “emergency responders” who may be excluded from leave provisions of the FFCRA. See Questions 56 and 57 at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

Full-pay: A covered employee is entitled to two weeks (up to 80 hours) of pay at 100% of the employee's regular rate of pay, up to \$511/day or \$5,100 total, when the employee cannot work or telework for the following reasons:

- The employee is under a federal, state, or local government quarantine or isolation order; AND/OR
- The employee has been advised by a healthcare provider to self-quarantine; AND/OR
- The employee is experiencing COVID-19 symptoms and seeking a medical diagnosis.

Partial pay: A covered employee is entitled to two weeks (up to 80 hours) of pay at 2/3 of the employee's regular rate of pay, up to \$200/day or \$2,000 total, when the employee cannot work or telework for the following reasons:

- The employee is caring for an individual who is under a federal, state, or local government quarantine or isolation order; AND/OR
- The employee is caring for an individual who has been advised by a healthcare provider to self-quarantine; AND/OR
- The employee caring for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19; AND/OR
- The employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

Generally, employees are paid based on the number of hours they would normally have been scheduled to work for the week at issue. Visit <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> for specifics on how emergency sick leave pay will be calculated under this new law.

Expanded FMLA Leave – Up to 12 Weeks Available

(For all state and local public employers, limited federal employers, and private employers with fewer than 50 employees)

In addition to the sick leave provisions of the new law, the FFCRA provides for up to 12 weeks of “expanded” FMLA leave to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19. This is the only reason that the expanded FMLA leave under the Act may be used. Here are a few important reminders on this expanded FMLA leave:

- To receive the expanded FMLA leave, a covered employee must have been on the employer's payroll for 30 calendar days before the leave starts.
- The employer is not required to pay an employee for the first 10 days of leave. An employee may elect to be paid for this time with other paid leave (i.e. accrued sick leave, vacation leave, personal leave, etc.).

- An employee may also elect to use the 80 hours of emergency paid sick leave under the Act during the first 10 days. Caring for a child as a result of a COVID-19 school or childcare provider closure is the only time an employee may use both the emergency paid sick leave and the expanded FMLA leave provisions of the FFCRA.
- For up to 10 weeks of the remaining FMLA leave, the employee will receive paid leave at 2/3 the employee's regular rate for the hours otherwise normally scheduled to work (up to \$200 per day or \$10,000 total).

For specifics on how pay will be calculated for the expanded FMLA leave, visit: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>. The DOL has also provided questions and answers regarding COVID-19 and the FMLA generally at: <https://www.dol.gov/agencies/whd/fmla/pandemic>.

This weekend the DOL updated its guidance on prior FMLA use. Question #44, <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>. The DOL has taken the position that for those employees who were covered by FMLA prior to April 1, the amount of FMLA leave an employee has under the FFCRA will depend on how much leave the employee has already taken during the previous 12-month period. According to the DOL:

For example, assume you are eligible for preexisting FMLA leave and took two weeks of such leave in January 2020 to undergo and recover from a surgical procedure. You therefore have 10 weeks of FMLA leave remaining. Because expanded family and medical leave is a type of FMLA leave, you would be entitled to take up to 10 weeks of expanded family and medical leave, rather than 12 weeks. And any expanded family and medical leave you take would count against your entitlement to preexisting FMLA leave.

It remains unclear how employers will apply the expanded leave provisions in practice, or whether the DOL will change its guidance in the future. For now, this is something to be aware of, as all employees will not automatically have 12 weeks of expanded FMLA leave under this interpretation. In the event that you have specific questions or issues that arise regarding the FFCRA, please do not hesitate to contact our office.

Nothing herein is intended to provide legal advice. This summary is not intended to cover the various complexities of the federal laws, nor could it, as the law is still developing on these new and evolving COVID-19 related issues. Our team is with you and your members as you navigate these challenging times. We are always available to answer our clients' questions.



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