

New Labor Department COVID-19 Temporary Rule for Paid Sick Leave and Expanded Family and Medical Leave Implementation (04/03/2020)

Payroll Updates

## New Labor Department COVID-19 Temporary Rule for Paid Sick Leave and Expanded Family and Medical Leave Implementation

The U.S. Department of Labor's (DOL) Wage and Hour Division has posted a COVID-19 *temporary rule* regarding how employers and workers will benefit from the protections and relief offered through the paid sick leave and expanded family and medical leave provisions in the Families First Coronavirus Response Act (FFCRA) [ [DOL News Release, 20-562-NAT, 4/1/20](#) ].

The FFCRA was signed into law on March 18, 2020 and reimburses private U.S. employers that have fewer than 500 employees (and certain public employers) with tax credits for the cost of providing employees with paid leave for specified reasons related to COVID-19. Small employers with fewer than 50 employees may qualify for an exemption from the requirement.

The law enables employers to keep their workers on their payrolls, while at the same time ensuring that workers are not forced to choose between their paychecks and the public health measures needed to combat the virus. The WHD's temporary rule is effective from April 1, 2020 through Dec. 31, 2020.

*Paid sick leave.* Generally, the FFCRA requires covered employers to provide eligible employees up to two weeks of paid sick leave at full pay, up to a specified cap, when the employee is unable to work due to COVID-19 related reasons (i.e., government quarantine or isolation order, self-quarantine medical recommendation, seeking related medical diagnosis).

Also, the FFCRA provides up to two weeks of paid sick leave at partial pay, up to a specified cap, when an employee is unable to work: (1) due to the need to care for an individual subject to a government quarantine or isolation order or medical self-quarantine recommendation; (2) because of a need to care for the employee's son or daughter whose school or place of care is closed or whose child care provider is unavailable due to COVID-19 related reasons; or (3) because the employee is experiencing a substantially similar condition.

*Extended family and medical leave.* The FFCRA additionally requires covered employers to provide up to 12 weeks of expanded family and medical leave, up to 10 weeks of which must be paid at partial pay, up to a specified cap, when an eligible employee is unable to work because of a need to care for the employee's son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons.

See [Senate Passes Updated Version of House Coronavirus Bill \(03/19/2020\)](#) for more information on the paid sick and extended family and medical leave provisions of the FFCRA.

*Payroll tax credits.* The FFCRA provides for reimbursement to covered private employers providing through refundable tax credits for all qualifying paid sick leave wages and qualifying family and medical leave wages paid to an employee who takes leave under the FFCRA, up to per diem and aggregate caps, and for allocable costs related to the maintenance of health care coverage under any group health plan while the employee is on the leave provided under the FFCRA. The IRS issued new Form 7200 and its instructions that includes more information on the tax credits.

See [IRS Issues Form/Instructions for Advance Payment of Employer Credits Due to COVID-19, \(04/02/2020\)](#) for more information on the tax credits.

*CARES Act amendments.* The Coronavirus Aid, Relief, and Economic Security Act (CARES) Act was signed into law on March 27, 2020. It amended the FFCRA by providing certain technical corrections, as well as clarifying the caps for payment of leave. The CARES Act also expanded family and medical leave to certain employees who were laid off or terminated after March 1, 2020, but who are reemployed by the same employer prior to Dec. 31, 2020. In addition, it provided authority to the Director of the Office of Management and Budget (OMB) to exclude certain federal employees from paid sick leave and expanded family and medical leave.

*New temporary rule.* The DOL's new temporary rule is issued to carry out the purposes of the FFCRA and ensuring consistency with the emergency paid sick and expanded family and medical leave. These new requirements are effective on April 1, 2020 and expire on Dec. 31, 2020.

The temporary rule includes an in-depth discussion on the paid leave requirements in the FFCRA described and interpreted in regulations appearing in new Part 826 of Title 29 of the Code of Federal Regulations.

Some highlights include:

- Employer notice. The FFCRA requires employers to post and display the law's requirements. On March 25, 2020, the DOL released a model notice. See [DOL Issues Mandatory Coronavirus Posters for Employers to Display, 03/30/2020](#). The regulations state that the notice may also be distributed by e-mail, posted electronically on an employee information website, or by direct mail.
- Employee notice of need for leave. The rules provide that an employer may require employees to follow reasonable notice procedures as soon as practicable after the first workday or portion of a workday for which an employee receives paid sick leave in order to continue to receive such leave.
- Documentation of Need for Leave. An employee must provide his or her employer documentation in support of paid sick leave or expanded family and medical leave. The documentation must include a signed statement containing the following information: (1) the employee's name; (2) the date(s) for which leave is requested; (3) the COVID-19 qualifying reason for leave; and (4) a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason. Additionally, an employee may need to provide more documentation depending on the qualifying reason for leave. For example, an employee would be required to provide the name of the government entity that issued the quarantine or isolation order that the employee is subject to.
- Health care coverage. The rules explain that an employee who takes expanded family and medical leave or paid sick leave is entitled to continued coverage under the employer's group health plan on the same terms as if the employee did not take leave.
- Return to work. In most instances, an employee is entitled to be restored to the same or an equivalent position upon return from paid sick leave or expanded family and medical leave in the same manner that an employee would be returned to work after FMLA leave. However, an employee is not protected from employment actions, such as layoffs, that would have affected the employee regardless of whether the leave was taken.
- Recordkeeping. Employers are required to retain all documentation related to paid leave provisions under FFCRA for four years, regardless if leave was granted or denied. Employers that deny a request based on the small business exemption must document its authorized officer's determination that the exemption criteria was met.

*Webinar on the FFCRA.* The WHD is posting a recorded webinar on April 3, 2020 to offer a more in-depth description FFCRA. To view the webinar, visit <https://www.dol.gov/agencies/whd/pandemic> .