



DOL Issues Workplace Poster and Guidance for Employers Regarding Paid Leave Under the FFCRA

The U.S. Department of Labor (“DOL”) has published a workplace poster and new guidance for employers regarding paid leave under the Families First Coronavirus Response Act (“FFCRA”).

FFCRA Poster

On March 25, 2020, the DOL made available a poster explaining rights and responsibilities under the FFCRA ([click here for poster](#)).

According to an [FAQ](#) issued along with the poster, covered employers are required to display the poster in a conspicuous place on premises, however an employer may satisfy this requirement “by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.”

Notice only needs to be given to current employees (not to applicants or laid off workers). The poster is currently only available in English, although the DOL is “working to translate it into other languages.”

Non-Enforcement of the FFCRA For Violations From March 18, 2020 Through April 17, 2020

In a [Field Assistance Bulletin](#), the DOL has indicated that it will not bring enforcement actions against employers for violations of the FFCRA occurring between March 18, 2020 through April 17, 2020, as long as the employer has made “reasonable, good faith efforts to the comply with the Act.” “Reasonable, good faith efforts” means:

- The employer remedies any violations, including by making all affected employees whole as soon as possible;
- The employer’s violations were not willful; and
- The DOL receives a written commitment from the employer to comply with the FFCRA in the future.

FFCRA Implementation Guidance

The DOL has issued detailed initial guidance about paid leave under Families First Coronavirus Response Act (“FFCRA”) in question and answer format. A copy of this guidance is available [here](#).

Among other things, the DOL’s guidance discusses:

- **How to determine if a business is under the 500 employee threshold:** Count *all* the employees in the United States (and U.S. territories) at the time of an employee's leave. This calculation includes employees who are (1) on leave; (2) jointly employed by employers (irrespective of whose payroll the employee is on); and (3) employed by an entity that, together with one or more entities, meets the integrated employer test.
- **How to seek a small business exemption from the FFCRA's paid leave provisions:** Wait for the DOL's forthcoming regulations.
- **Whether overtime hours matter for determining how much leave an employee gets:** If an employee regularly works overtime hours, the employee must be paid for hours the employee would have otherwise been normally scheduled to work, subject to the 80 hour limit under the paid sick time law and any applicable payout limits.
- **How to determine an employee's regular rate of pay for paid leave purposes:** Calculate the employee's average regular rate during the six months before leave or divide all compensation in the past six months by the number of hours worked during that period. If an employee has been employed less than six months, calculate their regular rate using their average rate of pay for each week they have worked.
- **Whether an employee can use up to 80 hours of paid sick time for each distinct qualifying paid sick time purpose (e.g., quarantine, child care, etc.).** No.
- **Whether an employee can use child care related leave under the paid sick time and expanded FMLA provisions at the same time.** Yes, assuming employee is eligible for both types of leave.
- **Whether an employer can deny paid sick time to an employee who was given paid sick time for a qualifying sick time purpose before April 2, 2020.** No.
- **Whether the paid sick time and COVID-19 FMLA child care- related leave are retroactive.** No.
- **How to determine when an employee "has been employed at least 30 calendar days by the employer" to be eligible for COVID-19 FMLA for child care purposes:** The employee must have been on the employer's payroll for the 30 calendar days immediately before the day of the employee's leave. For example, if an employee wanted to take leave on April 1, 2020, the employee would need to have been on the employer's payroll as of March 2, 2020.

Other Helpful Guidance from the DOL

- Families First Coronavirus Response Act: Employee Paid Leave Rights: www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave
- Families First Coronavirus Response Act: Employer Paid Leave Requirements: www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave
- COVID-19 and the Fair Labor Standards Act: Questions and Answers: www.dol.gov/agencies/whd/flsa/pandemic
- COVID-19 and the Family and Medical Leave Act: Questions and Answers: www.dol.gov/agencies/whd/fmla/pandemic
- WHD Response to COVID-19: www.dol.gov/agencies/whd/covid-response

For Questions/More Information

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