

The U.S. Department of Labor issued its first round of guidance on the provisions of FFCRA last week. Although many questions remain to be answered, here's what we know so far:

- FFCRA goes in effect on April 1, 2020.
- The paid leave provisions apply only to business that, at the time an employee's leave is taken, have fewer than 500 full-time and part-time employees, including temporary employees.

****ASA will propose that firms who have fluctuating headcounts be permitted to use a fixed prior period for making the determination. For example, its average weekly headcount in the immediately preceding calendar year****

- Temporary employees who are jointly employed by a staffing firm and its client must be counted by both employers in determining their respective size for purpose of FFCRA. The Family and Medical Leave Act typically views staffing firms and clients as joint employers. Further guidance is needed to determine precisely how temporary employees will be counted.
- The Secretary of Labor is authorized to grant relief for small businesses with fewer than 50 employees whose business would be jeopardized by the paid leave requirement. The Department of Labor states that the criteria for granting relief will be set forth in upcoming regulations.

As per the Department of Labor's Wage and Hour Division, who administers and enforces the new law's paid leave requirements, covered employers must provide to all employees:

- Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay (see below)
- Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (see below)

A covered employer must provide to employees that it has employed for at least 30 days:

- Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19

FROM THE U.S. DEPARTMENT OF LABOR:

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date through December 31, 2020.

Generally, the Act provides that covered employers must provide to **all employees**:

- *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay* where the employee is unable to work because the employee is quarantined (pursuant to federal, state, or local government order or advice of a health care provider) and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay because the employee is unable to work* because of a bona fide need to care for an individual subject to quarantine (pursuant to federal, state, or local government order or advice of a health care provider); or 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; 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

A covered employer must provide to **employees that it has employed for at least 30 days**:

- *Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay* where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19

Qualifying reasons for leave:

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

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);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

Duration of leave:

For leave reasons (1)-(4) and (6): A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

For leave reason (5): A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Calculation of pay:

For leave reasons (1), (2), or (3): Employees taking leave shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a two-week period).

For leave reasons (4) or (6): Employees taking leave shall be paid at two-thirds their regular rate or two-thirds the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a two-week period).

For leave reason (5): Employees taking leave shall be paid at two-thirds their regular rate or two-thirds the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period: two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

Tax credits:

Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage. For more information, please see the Department of the Treasury's website.

Employer notice:

Each covered employer must post in a conspicuous place on its premises a notice to be prepared by the Secretary of Labor of FFCRA requirements within seven days after the date of enactment.

Prohibitions:

Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA.

For more information, visit the U.S. Department of Labor's Families First Coronavirus Response Act: Questions and Answers found at www.dol.gov/agencies/whd/pandemic/ffcra-questions.