

COVID-19 UPDATE

APRIL 1, 2020

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA) – UPDATED DOL Q&A DOCUMENT

The Department of Labor (DOL) released initial guidance clarifying several provisions set forth in the Families First Coronavirus Response Act (FFCRA) earlier this week. Since then, the DOL has provided a model notice, along with some guidance for handling the notice requirements, and recently updated its Questions and Answers (Q&A) document to address many more items as described below.

MODEL NOTICE

Public employers (of all sizes) and private employers with <500 employees who are required to comply with the new Emergency Paid Sick Leave Act and Expanded FMLA requirements going into effect April 1, 2020 are required to provide employees with information about the paid leave. As with other DOL posters (e.g. FMLA and USERRA), the general requirement is that employers must post the notice in a conspicuous location on their premises. However, the DOL recognized that under the current circumstances, many employees may not be working onsite. Therefore, employers can also satisfy the notice requirement if the notice is made available on the employer's website, or if the notice is mailed or emailed to employees.

The model notice, as well as a Q&A providing instructions for the notice can be found here - <https://www.dol.gov/agencies/whd/pandemic>.

ADDITIONAL DOL QUESTIONS AND ANSWERS

The Q&A document provided earlier this week set forth 14 questions and answers providing clarity on some of the paid leave requirements such as the effective date (4/1/2020) and how to count employees for purposes of the 500 employees threshold. The DOL has since added substantially to the Q&A document, which now includes 37 questions and answers. The additions provide helpful clarification on the following items, among other things:

- Documentation requirements for those employees requesting paid leave;
- The availability of paid leave for employees who are permitted to telework;
- The availability of paid leave for employees who are furloughed or laid off;
- When intermittent paid leave may be available;
- The ability for employees to supplement paid leave with other employer-provided paid leave; and
- Continuation of group health benefits during and after paid leave.

There are certainly still questions to be answered, and we expect guidance will continue to be provided over the next couple of weeks, but the Q&A document is helpful in providing some direction for employers who are preparing to comply with these new paid leave requirements next week. NOTE: The DOL has promised some flexibility

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around enforcement through April 17, 2020, during which time the DOL indicates it would prefer to work with employers to help them understand and comply with the requirements. Employers will not be penalized for failure to comply during this period if the employer is making reasonable, good faith efforts to comply.

The updated DOL FAQ can be found here - <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

Disclaimer

This article is provided for informational purposes only and is not intended to provide legal or actuarial advice. The issues and analyses presented in this article should be reviewed with outside counsel before serving as the basis of any legal or other decision.