

SimplyHR | Employment & Labor Blog

U.S. DEPARTMENT OF LABOR ISSUES ADDITIONAL FFCRA GUIDANCE



Author

T. Christopher Bailey
314.345.4727
tcb@greensfelder.com

Attempting to further clarify the confusion faced by employers following passage of the Families First Coronavirus Response Act (FFCRA), the U.S. Department of Labor (DOL) issued its fourth set of Q&As (#60-79) to help with implementation.

The DOL issued its first set of Q&As (#1-15) on March 24, 2020 (read more here), followed closely by its second set (#16-37) and third set (#38-59) on March 26 and March 28, respectively (read more here). The DOL also released a temporary rule issuing regulations applicable to the FFCRA on April 1 (read more here).

With its latest release, the DOL continues its efforts to clarify the circumstances under which paid sick leave and expanded family and medical leave under the FFCRA must be provided to eligible employees. A full text of the DOL's Q&As can be found here. Highlights from the fourth set include:

- **Quarantine or isolation orders include shelter-in-place or stay-at-home orders.** Employees may be entitled to paid sick leave if the employer has work for the employee to perform (including telework), but the employee is prevented from working by a federal, state or local shelter-in-place order. However, the employee is **not** entitled to paid sick leave if the employer closes or does not have work available due to a shelter-in-place order.
- **An employee's decision to self-quarantine must be supported by a directive or advice from a health care provider.** An employee is eligible for paid sick leave if a health care provider directs or advises the employee to stay home because the employee may have COVID-19 or may be susceptible to COVID-19, for example because of an underlying medical condition. However, an employee is not eligible for paid sick leave where the employee unilaterally decides to self-quarantine without ever seeking medical advice to self-quarantine, even if the employee exhibits COVID-19 symptoms. The decision must be supported by medical advice.
- **Paid sick leave to care for another person is limited.** An employee may take paid sick leave to care for an immediate family member or someone who regularly resides in their home who is subject to a quarantine order from a health care provider where the provision of care prevents the

U.S. DEPARTMENT OF LABOR ISSUES ADDITIONAL FFCRA GUIDANCE

employee from working (including telework). An employee may also take paid sick leave to take care of someone where the relationship between the parties creates an expectation that the employee would care for the person subject to a quarantine order, and that individual depends on the employee for care during the quarantine or self-quarantine. But paid sick leave is not available for an employee to take care of someone with whom there is no pre-existing relationship, or an expectation that the employee will care for the person during the quarantine or self-quarantine.

- **Paid sick leave and expanded family and medical leave are available to care for disabled children over the age of 18.** If the child is unable to take care of himself or herself due to the disability, an employee may take paid sick leave and expanded family and medical leave to care for the child if the child's school or place of care is closed or his/her child care provider is unavailable, provided the employee is otherwise unable to work (including telework).
- **Paid sick leave and expanded family and medical leave may not be available where another parent is already caring for the child.** Paid sick leave and expanded family and medical leave are only available when needed. If another parent, guardian or child care provider is available to provide care for the child, an employee may not be entitled to paid sick leave or expanded family and medical leave.
- **Schools are closed, even if teaching is being handled remotely.** For purposes of determining paid sick leave and expanded family and medical leave eligibility, schools are considered closed if the physical facility is closed. This is true even if some or all instruction is being provided online or through another format and the child is still required to complete assignments.
- **At this time there are no “substantially similar conditions.”** The FFCRA included a provision that allowed employees to take paid sick leave for “substantially similar conditions” as defined by the U.S. Department of Health and Human Services (HHS). At this time, HHS has not identified any such condition.
- **Paid sick leave and expanded family and medical leave are generally not available with other forms of leave.** An employee receiving workers' compensation or temporary disability benefits is generally not eligible for paid sick leave or expanded family and medical leave because the employee is unable to work, unless the employee is released for light duty, the employer has light duty available, and a qualifying reason prevents the employee from performing the light duty. Where an employee is on an employer-approved leave of absence, the employee is not eligible for paid sick leave or expanded family and medical leave. However, if the leave of absence is voluntary, the employee may terminate the leave and begin taking paid sick leave or expanded family and medical leave where a qualifying reason exists. If the leave of absence is mandatory, then the employee is unable to work for reasons other than a qualifying reason and is not eligible for paid sick leave or expanded family and medical leave.



U.S. DEPARTMENT OF LABOR ISSUES ADDITIONAL FFCRA GUIDANCE

- **DOL enforcement will be retroactive to April 1, 2020.** Although the DOL announced it will not enforce the FFCRA from April 1 through April 16, it expects employers to make good faith efforts to comply and will retroactively enforce violations that are not remedied before April 17.

** This post assumes the reader's familiarity of the basics of the FFCRA and is intended to be a quick synopsis of top takeaways for employers.*

Our Employment & Labor Practice Group attorneys are continuously monitoring developments and are available to answer your questions regarding these high-level updates as well as specific situations that your business is encountering related to COVID-19.

[Link to COVID-19 Resources page](#)

