



e-Alert: COVID-19

03.25.20

Department of Labor Issues Guidance on the Families First Coronavirus Response Act

Background

To help counter the negative financial impact to Americans of the COVID-19 outbreak, President Trump officially signed the Families First Coronavirus Response Act (FFCRA) into law on Wednesday, March 18, 2020. The act was passed by the House of Representatives on March 14, underwent revisions on March 16, and was passed by the Senate on March 18. The Department of Labor (DOL) has published additional guidance on the implementation of the FFCRA and the two new leave categories, Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act (EFMLA). The DOL has issued new [Families First Coronavirus Response Act: Questions and Answers](#).

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Summary

Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (FMLA Expansion Act) Guidance:

- The effective date of the EPSLA and the FMLA Expansion Act is now April 1, 2020, and the FFCRA is not retroactive; it applies to leave taken between April 1, 2020, and December 31, 2020;
- The employer cannot deny paid sick leave to employees under the FFCRA once it is in effect;
- The guidance clarified that employees could be eligible for both the EPSLA and FMLA Expansion Act;
- Additional guidance is provided regarding calculating employee pay and caps on that pay;
- The DOL issued the FFCRA poster, which employers must post in a conspicuous place. However, given the remote nature of most employees at the moment, an employer satisfies this requirement by either emailing or direct mailing the poster to employees, or posting it on an employee internal or external website. The poster can be found [here](#).

Small Business Exemption Guidance:

- The DOL expects to issue regulations in “April 2020,” but did not provide a specific date. The regulations will include guidance detailing how small businesses with fewer than 50 employees can obtain an exemption to the paid leave provisions and outlines that employers should begin to document why their business with fewer than 50 employees meet the criteria set forth by the DOL.

Tax Credit Guidance:

- 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 FFCRA for a qualifying reason, meaning that if an employee does not qualify for the leave but you provide paid leave anyway, you will not be eligible for any credit related to that leave. The credits do not cover any leave that has been paid out prior to April 1, 2020. The guidance also clarifies that the credits will extend to amounts paid or incurred to maintain health insurance coverage.

Employer Next Steps

- Before April 1, 2020, create temporary policies and procedures that comply with the requirements of the FFCRA.
- Provide all employees with the FFCRA model notice.

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