



EMPLOYMENT LAW ALERT – MARCH 31, 2020

Families First Coronavirus Response Act Clarified United States Department of Labor Guidance

As Tocci & Lee clients are aware the “Families First Coronavirus Response Act” (FFCRA) was signed into law on March 19. The FFCRA was designed to take effect on April 2 but the United States Department of Labor (the “DOL”) subsequently issued guidance designating the effective date as *April 1*. The FFCRA expires on December 31, 2020. The following guidance simplifies previous Employment Law Alerts and incorporates DOL clarifications of the Act. The DOL has published comprehensive Questions and Answers for employers and employees which can be accessed at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

Employers Required to Provide 80 Hours of Paid Sick Leave

- FFCRA requires employers with fewer than 500 employees to provide their employees with 80 hours of paid sick leave for reasons related to the coronavirus pandemic. The 80 hours of sick leave is **additional to** paid sick leave required by law (such as the Massachusetts Sick Leave Law which requires employers with more than 10 employees to provide paid sick leave and employers with 10 or fewer employees to provide unpaid sick leave).
- Paid Sick Leave Reasons: The FFCRA allows employees to use sick 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) above or self-quarantine as described in 2) above; 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.
- Pay Amount: An employee who is out sick due to categories 1 through 3 above must be paid at the employee’s regular rate of pay up to a cap of \$511 per day and a cap total of \$5,110. Employees who are absent due to categories 4 or 5 above must be paid two-thirds the employee’s regular rate of pay up to a cap of \$200 per day and a cap total of \$2,000. Part-time or irregularly scheduled employees must be paid based on the average number of hours the employee worked for the six months prior to taking paid sick leave. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work.
- Additional Provisions – FFCRA paid sick leave is for these emergency, coronavirus-related purposes and will not carry over from year to year. Employers may not change leave policies to avoid the obligations of the FFCRA additional leave requirements.

- An employee who has been terminated, laid off or furloughed prior to requesting sick leave is not entitled to leave.

Emergency Family And Medical Leave Act (FMLA) Expansion

- **Expanded Coverage And Eligibility:** The FFCRA expands the FMLA on an emergency, temporary basis to employers with fewer than 500 employees in a workplace. Employees are eligible if they have worked for the employer for at least 30 days prior to the designated leave. Obviously, employers who were not previously subject to the FMLA must provide job-protected leave to employees as required by the FFCRA. An employee who has been terminated, laid off or furloughed prior to requesting FMLA leave is not entitled to leave.
- **Clarified Reason For Emergency FMLA Leave:** Any qualified employee may take up to 12 weeks of paid, job-protected leave if unable to work or work remotely to take care of the employee's child if the child's school or child-care has been closed due to the coronavirus emergency. This is a significant limitation and departure from the original version of the bill.
- **Paid and Unpaid Leave:** The first 10 days of Emergency FMLA leave may be unpaid, but an employee may elect to substitute any accrued paid time off, including vacation or sick leave (and including paid leave provided by the paid sick leave provision of the FFCRA), to cover some or all of the 10-days of unpaid leave. After the 10-day period, the employer must pay full-time employees at two-thirds the employee's regular rate of pay for the number of hours the employee would otherwise be normally scheduled. Part-time or irregularly scheduled employees must be paid based on the average number of hours the employee worked for the six months prior to taking paid sick leave. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work. Paid FMLA under the FFCRA, however, is capped at \$200 per day and \$10,000 in total.
- **Expanded Definitions –** The FFCRA expands the definition of a "parent" under FMLA, to include a parent-in-law of the employee, a parent of a domestic partner of the employee, and a legal guardian or other person who served as the employee's parent when the employee was a child.
- **No Piggy-Backing on Paid Sick Leave –** Employees are not entitled to take more than 12 weeks total of paid sick leave and paid FMLA leave under the FFCRA.

Tax Credits

- Employers are eligible for a series of refundable tax credits for either FFCRA paid sick or family medical leave described above. Employers should consult their tax expert or preparers for more information regarding the tax credits.

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