

New Regulations Help Define the Families First Coronavirus Response Act (FFCRA)

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The Department of Labor has issued temporary regulations (effective April 1 through December 31, 2020) to help define certain provisions of the FFCRA for employers.

The following points merit particular attention:

- ▶ The term “son or daughter” for purposes of childcare leave that must be permitted means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person acting in place of a parent, who is under 18 years of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability.
- ▶ For purposes of the Emergency Paid Sick Leave Act (EPSLA), a quarantine or isolation order includes quarantine, isolation, containment, shelter in place, or stay-at-home orders issued by any federal, state, or local authority that causes the employee to be unable to work even though the employer has work for the employee to perform. Advice to categories of citizens (e.g., of certain age ranges or of certain medical conditions) to shelter in place or stay at home are considered quarantine and isolation orders triggering eligibility for emergency paid sick leave.
- ▶ An employee is considered to be under a quarantine or isolation order for purposes of the EPSLA if a health care provider has advised the employee to self-quarantine based on known or suspected COVID-19 infection, or particular vulnerability to COVID-19.
- ▶ Employees who are subject to a quarantine or isolation order, who are not sick and are asked to telework and able to telework, are not eligible for emergency paid sick leave, regardless of whether they agree to telework.
- ▶ Employees are eligible for emergency paid sick leave if they are caring for “an individual” subject to a quarantine or isolation order or advised by a health care provider to self-quarantine. For purposes of the EPSLA, an “individual” means an employee’s immediate family member, a person who regularly resides in the employee’s home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care

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for the person if he or she were quarantined. "Individual" does not include persons with whom the employee has no personal relationship.

- ▶ Employees who are not working because the employer does not have work for them to perform, whether such lack of work is related to a general shelter in place or stay-at-home order, other COVID-19 related reasons, or circumstances unrelated to COVID-19, are not eligible for any kind of leave under the FFCRA.
- ▶ For purposes of employees who may be excluded from emergency paid sick leave or expanded family and medical leave under the FFCRA, an emergency responder is anyone necessary for the transport, care, healthcare, comfort, or nutrition of patients, or is otherwise needed to assist with the response to COVID-19. This includes, but is not limited to, law enforcement officers, correctional institution personnel, firefighters, emergency medical services personnel, public health personnel, paramedics, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for facilities employing anyone needed to assist with the response to COVID-19 and whose work is necessary to maintain the operation of the facility.
- ▶ Employees may take child care leave under FFCRA intermittently (i.e., in separate periods of time, rather than one continuous period) if agreed to by the employer. Employees may not take intermittent leave under the EPSLA if the leave is for any reason other than child care.
- ▶ Employees are not required to provide documentation of their need to take leave under the FFCRA. However, they are required to provide certain information to employers.
 - ▶ For both emergency paid sick leave and expanded family medical leave:
 - ▶ Specific dates for which leave is requested;
 - ▶ Qualifying reason for leave; and
 - ▶ Oral or written statement that the employee is unable to work because of the qualifying reason for leave.
 - ▶ For emergency paid sick leave related to a quarantine or isolation order:
 - ▶ The name of the government entity that issued the order; or
 - ▶ The name of the health care provider who advised the employee or individual cared for by the employee to self-quarantine due to concerns related to COVID-19.
 - ▶ For child care leave under the EPSLA and Expanded Family and Medical Leave Act:
 - ▶ The name of the son or daughter being cared for;
 - ▶ The name of the school, place of care, or child care provider that has closed or become unavailable; and
 - ▶ A representation that no other suitable person will be caring for the son or daughter during the period during which the employee is requesting leave.

The regulations may be accessed through **this link**.

If you have any questions about the Families First Coronavirus Response Act, the Department of Labor regulations, or any other workplace issues during the COVID-19 pandemic, please contact **Rebecca Green** or any attorney in our **Labor and Employment Department**.