

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

03.30.2020

ATTORNEYS

Rebecca Green

On March 25 and 28, 2020, the Department of Labor (DOL) issued new guidance on the Families First Coronavirus Response Act (FFCRA). FFCRA provides up to 12 weeks of child care leave through an expanded provision of the Family and Medical Leave Act (FMLA) and 2 weeks of emergency paid sick leave. The new guidance can be accessed through the DOL's "COVID-19 and the American Workplace" webpage at [this link](#).

On this webpage (and pages linked to it), the DOL includes the following points:

- ▶ **The effective date of FFCRA is April 1, 2020.** The legislation as worded had left some ambiguity about the actual date of implementation.
- ▶ **All non-federal public employers are covered by FFCRA.** The "fewer than 500 employees" parameter applies only to private sector employers.
- ▶ **Limit on paid sick leave.** The paid sick leave provided under the Emergency Paid Sick Leave Act is capped at 80 hours total for full-time employees (and less for part-time employees), even if leave is taken for more than one qualifying reason.
- ▶ **FMLA and emergency paid sick leave may run concurrently.** Employees are entitled to a total of twelve weeks of paid leave to care for a child due to school or daycare closure or because the child's regular care provider is unavailable due to reasons related to COVID-19. The Emergency Paid Sick Leave Act provides two weeks of paid leave. An employee may elect to use that period of paid leave to cover the first ten workdays of child care leave, which are otherwise unpaid under the expanded FMLA. An employee using FMLA and emergency paid sick leave to cover child care leave are entitled to 12 weeks total.
- ▶ **Model Notice.** The DOL has now issued its Model Notice, which employers may post at the worksite to inform employees of their rights under FFCRA. Employers are required to post a notice, but it does not have to be the notice published by the DOL. A copy of the Model Notice may be downloaded [here](#).

- ▶ **Definition of “Emergency Responder.”** FFCRA allows employers to exclude health care providers and emergency responders from the expanded FMLA and emergency sick leave benefits. The DOL has defined “emergency responder” as an employee who is necessary for the provision of transport, care, comfort, and nutrition of patients, or whose services are otherwise needed to limit the spread of COVID-19. Such employees may include law enforcement, fire fighters, emergency medical services and public health personnel, correctional institution personnel, dispatchers, and public works personnel, as long as they meet the threshold requirement of providing services necessary to limit the spread of COVID-19.
- ▶ **Tax Credits.** While the text of FFCRA seemed to leave open the possibility that some public agencies would be eligible for federal reimbursement of wages paid to employees under FFCRA, the DOL guidance clarifies that only private employers are eligible for tax credits under FFCRA.

If you have any questions about the Families First Coronavirus Response Act or other COVID-19 legislation, please contact **Rebecca Green, Catherine Blue Holmes** or any other attorney in our **Labor & Employment Department**.