

NEWS & INSIGHTS

Department of Labor issues temporary rule regarding paid leave under the FFCRA

INSIGHTSLEGAL UPDATE

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The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.

On April 1, the Department of Labor issued regulations regarding implementation of paid leave under the Families

First Coronavirus Response Act (FFCRA). The [temporary rule](#), effective April 1, 2020 through December 31, 2020, clarifies some of the questions raised by the FFCRA. Of particular interest, the temporary rule provides that:

- An employee subject to a governmental quarantine or isolation order (including “shelter in place” or “stay at home”) may take paid sick leave only if being subject to one of these orders is the factor that prevents the employee from working or teleworking. An employee subject to one of these orders may not take paid sick leave where the employer does not have work for the employee.
- An employee is not entitled to take paid sick leave to self-quarantine without seeking a medical diagnosis.
- An employee may not take paid sick leave to care for someone with whom the employee has no personal relationship. The “individual” being cared for must be an immediate family member, roommate, or similar person with whom the employee has a relationship that creates an expectation that the employee would care for that person.
- Employers of less than 50 employees may deny paid sick or extended family medical leave only to those otherwise eligible employees under the following circumstances:
 1. such leave would cause the small employer’s expenses and financial obligations to exceed available business revenue and cause the small employer to cease operating at a minimal capacity;
 2. the absence of the employee or employees requesting such leave would pose a substantial risk to the financial health or operational capacity of the small employer because of their specialized skills, knowledge of the business, or responsibilities; or
 3. the small employer cannot find enough other workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services the employee or employees requesting leave provide, and these labor or services are needed for the small employer to operate at a minimal capacity.
- If a small employer decides to deny paid sick leave or expanded family and medical leave to an employee whose child’s school or place of care is closed, or whose childcare provider is unavailable, the small employer must document the facts and circumstances that meet the criteria set forth above to justify such denial. The employer should not send such material or documentation to the Department, but rather should retain such records for its own files.
- Where an employee has already taken FMLA leave in the employer’s current 12-month leave year, the maximum 12 weeks of “public health emergency leave” required under the FFCRA leave is reduced by the amount of the FMLA leave already taken. In total, the expanded leave entitlement under the FFCRA is limited to 12 weeks (first two weeks unpaid) for the term of the FFCRA (April 1, 2020 through December 31, 2020) even if that term spans two 12-month periods under the employer’s FMLA leave year.

Saxton & Stump attorney [Rick Hackman](#) is available to further discuss the provisions of the temporary rule and how

our [Labor and Employment](#) group can provide guidance for businesses when implementing the FFCRA.

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