

Labor and Employment

COVID-19 Workplace Impact – DOL Issues Additional Guidance on Employee Leave Rights Under the FFCRA



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On March 26 and 27, the US Department of Labor (DOL) issued additional guidance on employee leave rights under the Families First Coronavirus Response Act (FFCRA), which will become effective April 1, 2020.

On March 26, the DOL [issued](#) posters that will fulfill employers' obligation to advise employees of their rights under the FFCRA. The DOL also issued a question and [answer](#) document further addressing how an employer can fulfill its notification obligations.

The next day, the DOL [announced](#) additional guidance on the FFCRA's substantive provisions. The DOL's extensive questions and [answers](#) cover a range of helpful topics, including:

- **Determining if an employer falls under the 500-employee coverage threshold**
 - Employers must count employees on leave, temporary employees, day laborers and jointly-employed individuals.
 - The DOL also explained that two or more entities are separate unless they meet the Family and Medical Leave Act integrated employer [test](#).
- **Calculating leave entitlement for part-time employees** – Employers should calculate hours of leave based on the part-time employee's average number of hours worked in a two-week period. However, if the employee's schedule varies, an employer may use a six-month average.
- **Inclusion of overtime pay** – Overtime must be included if it is part of the employee's normally scheduled work hours.
- **80 hours cap on Emergency Paid Sick Leave Act** – The 80 hours of sick leave for a full time employee is a ceiling that applies to any combination of qualifying leave.
- **Previously-granted leave cannot be counted** – Leave granted for qualifying reasons before April 1 cannot be counted towards an employee's entitlements once the FFCRA becomes effective.
- **Impact of subsequent furloughs** – If an employee is furloughed for lack of work after the FFCRA becomes effective, they are not entitled to any subsequent leave under the Act. An employee also may not substitute leave for hours that are reduced for lack of work.

The DOL's guidance also addresses various scenarios that may arise when employees are seeking to take sick leave or family/medical leave on an intermittent basis, and other topics that may arise for employers. Employers should carefully review the DOL's guidance as they prepare for the FFCRA's effective date.

Conscious of the human, operational and financial strain that coronavirus is placing on businesses and organizations worldwide, Jenner & Block has assembled a multi-disciplinary Task Force to support clients as they navigate the legal and strategic challenges of the COVID-19 / Coronavirus situation.

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