

DOL Issues Notice Poster of Employees' Rights Under the FFCRA and Guidance Regarding the Non-Enforcement Period

March 26, 2020

On March 25, 2020, the Department of Labor (DOL) released its notice poster for the Families First Coronavirus Response Act (FFCRA), which goes into effect April 1, that employers will be obligated to "post and keep posted in conspicuous places at the workplace." The poster can be found at the following link and is enclosed at the end of this alert:

- https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

The DOL also posted a "Frequently Asked Questions" regarding the posting of this notice, which provided the following key points:

- All employers covered by the FFCRA (public agencies and employers with fewer than 500 employees) must post this notice in a conspicuous place on its premises.
- Employers are only required to give notice to current employees and new hires. Employers do not need to provide notice to recently laid-off employees or new job applicants.
- If employees are teleworking, an employer may satisfy the notice requirements of the FFCRA by emailing or directly mailing this notice to employees, or by posting this notice on an employee information or external website.
- This notice is not required to be posted in multiple languages, but the DOL is working to translate this notice into additional languages.
- Copies of this notice can be obtained free of charge by (1) contacting the DOL's Wage and Hour Division at 1-866-4-USWAGE (1-866-487-9243); or (2) downloading and printing a copy of the notice from the DOL's website: <https://www.dol.gov/agencies/whd/posters>
- The DOL may revise this notice and has advised employers to check the Wage and Hour Division's website for up-to-date information.

The DOL also issued Field Assistance Bulletin No. 2020-1. This Bulletin provides guidance regarding the DOL's temporary non-enforcement period applicable to the FFCRA. This Bulletin provides that the DOL will not bring enforcement actions for violations of the FFCRA that occurred **between March 18, 2020 and April 17, 2020, so long as the employer has made reasonable and good faith efforts to comply with the Act.** An employer acts reasonably and in good faith when it: (1) remedies any violation; (2) does not willfully violate the Act; and (3) provides the DOL with a written commitment to comply with the Act in the future. Employers are cautioned that the DOL has reserved its rights to bring enforcement actions during this temporary non-enforcement period if the employer is found to have not acted reasonably or in good faith.

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NOTE: The following language is required by Rule 7.2 of the Alabama State Bar Rules of Professional Conduct: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."

EMPLOYMENT

Alert

This alert was prepared by Hand Arendall Harrison Sale's Employment and Labor Practice Group. For further information or assistance, please contact Emily Van Haneghan or the Employment and Labor Group attorney with whom you normally work.

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EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- $\frac{2}{3}$ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 10 weeks more of paid sick leave and expanded family and medical leave paid at $\frac{2}{3}$ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days* prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to **telework**, because the employee:

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| <ol style="list-style-type: none">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) or self-quarantine as described in (2); | <ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
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▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd

