

# COVID-19: DOL Issues Guidance and Model Notices on FFCRA

Following the publication of the Families First Coronavirus Response Act (FFCRA), the Department of Labor has issued model notices for employees regarding their leave entitlements and benefits available under the Act, along with instructions on how to provide this notice and to whom.

For a copy of the model notice for non-federal employers, click [here](#). For a copy of the DOL's instructions on publication of this notice, click [here](#). This material is also available on the DOL's website [here](#).

Federal notices must be posted in a conspicuous location. The DOL notes in its instructions that the notice also may be provided via email or direct mail if employees are working remotely or are not currently at the workplace.

The DOL also issued Fact Sheets for both employers and employees. The fact sheet for employees can be found [here](#). The fact sheet for employers can be found [here](#).

Finally, the DOL also published a series of questions and answers for employers on how the Act is to be interpreted. This memorandum can be found [here](#).

The DOL noted that further guidance materials will be forthcoming. However, the current guidance significantly changes employers' expectations in one key area: the effective date of the legislation. Although the FFCRA seemed to indicate that it would be effective on April 2, 2020 (15 days after it was signed by the President), the Act specifically provided that it would be effective no later than that date. The DOL chose to move up that date, and **the FFCRA benefits are now mandated as of April 1, 2020**.

Remember that the FFCRA applies only to employers with less than 500 employees. The Act provides for expanded paid FMLA benefits as well as sick leave for the majority of employees. Specifically, the DOL notes that paid leave under the FFCRA is provided in the following circumstances:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care professional to self-quarantine (i.e., not the employee's own choice);
3. The employee is experiencing COVID-19 symptoms and seeking a medical diagnosis;
4. The employee is caring for an individual who qualifies under (1) or (2);
5. The employee is caring for a son or daughter where the school or child care provider has been closed for COVID-19 reasons; or
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Employees will be granted leave and 100% of pay for up to 80 hours for conditions 1, 2 and 3 above. This benefit is capped at \$511 daily and \$5110 in total.

Employees will be granted leave and 2/3 of their pay for up to 80 hours for conditions 4, 5 and 6 above. This benefit will be capped at \$200 daily and \$2,000 in total.

Employees will be granted leave and 2/3 of their pay for ten additional weeks for condition 5 above. This benefit will be capped at \$200 daily and \$12,000 in total.

Part-time employees are granted a prorated benefit based upon their normally-scheduled hours of work. The "regular rate of pay" is calculated as an average rate paid over the prior six months. For employees with fluctuating compensation, the calculation is based upon total compensation earned over the six-month period divided by the number of hours worked over that period.

These paid leave provisions are limited to the COVID-19 issues noted above, and will be available to employees only between April 1, 2020 and December 31, 2020. They can be used intermittently or consecutively.

Remember that this is not an additional bank of time that would be automatically added to a California employee's sick leave bank, nor is it available for use by employees outside of the above conditions or beyond December 31, 2020. If employers wish to receive the tax benefits associated with these benefits, those tax benefits may not be granted prior to the effective date of April 1, 2020. For more information on the related tax benefits available to offset this paid leave, see LightGabler's legal update [here](#).

Employers are cautioned that they should not lay off employees merely to avoid the impact of this Act. If layoffs are necessary for business and economic reasons related to COVID-19 but not specifically because of the FFCRA, no further benefits (including FFCRA benefits) would be available to employees who have been laid off. However, laying off employees because they request benefits (or may become eligible for benefits) under the FFCRA could be deemed to be retaliatory. Remember as well that employees on furlough would still be eligible for these benefits.

The DOL has indicated that further regulations will be forthcoming. In addition, the federal government is expected to issue a further stimulus bill this week, which may provide additional relief to businesses and employees alike. We will continue to update you as further information becomes available.

For further questions or legal assistance with COVID-19 issues specific to your company, contact the employment attorneys at LightGabler.  
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