

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

FFCRA REGULATIONS

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- The FFCRA or Act requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The Department of Labor's Wage and Hour Division administers and enforces the new law's paid leave requirements. These provisions will apply from April 1, 2020 through December 31, 2020.

EMPLOYEES OF COVERED EMPLOYERS

- Employees of covered employers are eligible for:
 - Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (due to Federal, State, or local government order or advise of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or

EMPLOYEES OF COVERED EMPLOYERS

- Employees of covered employers are eligible for:
 - Two weeks (up to 80 hours) of paid sick leave to two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (due to Federal, State, or local government order or advise of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and

EMPLOYEES OF COVERED EMPLOYERS

- Employees of covered employers are eligible for:
 - Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay or minimum wage, whichever is higher, where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

COVERED EMPLOYERS:

- The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees.
- Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

ELIGIBLE EMPLOYEES:

- *All employees of covered employers are eligible for two weeks of paid sick time for specified reasons related to COVID-19. Employees employed for at least 30 days are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19.*

ELIGIBLE EMPLOYEES:

- Note that an individual generally is entitled to paid sick leave under the FFCRA regardless of how much leave has been taken under the Family and Medical Leave Act (FMLA). But, if someone takes paid sick leave concurrently with the first two weeks of emergency family and medical leave, which otherwise would be unpaid, those two weeks DO count toward the 12 workweeks in the FMLA's 12-month period.

NOTICE: EPSLA

- Where leave is foreseeable, an employee should provide notice of leave to the employer as is practicable. After the first workday of paid sick time, an employer may require employees to follow reasonable notice procedures in order to continue receiving paid sick time.
- On April 1, 2020 the DOL regulations confirmed that employees must give notice to their employers of the need to take leave and must provide supporting documentation of requests for paid sick leave and emergency family and medical leave.

NOTICE: EPSLA

- The employee is responsible to complete the following information:
 - The employee's name.
 - The date(s) for which leave is requested.
 - The coronavirus-qualifying reason for leave.
 - A statement that the employee can't work or telework because of this reason.
 - Name the government entity that issued the quarantine or isolation order to which the employee is subject, if that is the reason for paid sick leave.
 - **Consider a form for all employees with the requested information.*

NOTICE: EPSLA

- If the employee is seeking leave because he or she is self-quarantine they must provide the name of the health care provider making the quarantine recommendation.
- Someone caring for a person who is quarantined must provide either the government entity that issued the quarantine or isolation order or the name of the health care provider who advised the individual to self-quarantine.

NOTICE: EFMLEA

- The DOL said an individual requesting expanded family and medical leave must provide:
 - The name of the child being cared for.
 - The name of the school, place of care or childcare provider that closed or became unavailable due to coronavirus reasons.
 - A statement representing that no other suitable person is available to care for the child during the period of requested leave.

NOTICE: EFMLEA

- The normal FMLA certification rules apply to an employee's own serious health condition related to the coronavirus and to the employee's need to care for a spouse, son, daughter or parent with a serious health condition.
- If an employee fails to give proper notice, the employer should give him or her notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave, the regulations state.

QUALIFYING REASONS FOR LEAVE:

- Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the employee:
 - 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;

QUALIFYING REASONS FOR LEAVE:

- 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- 5. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
- 6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

DURATION OF LEAVE:

- **For reasons (1)-(4) and (6):** A full-time employee is eligible for 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.
- If a part-time employee's hours various, the employer should take a 6-month average.

DURATION OF LEAVE:

- **For reasons (5):** A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical leave) at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

CALCULATION OF PAY:

- **For leave reasons (1,) (2), or (3):** employees taking leave are entitled to pay at either their regular rate of the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

CALCULATION OF PAY:

- **For leave reasons (4) or (6):** employees taking leave are entitled to pay at $\frac{2}{3}$ their regular rate or $\frac{2}{3}$ the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

CALCULATION OF PAY:

- **For leave reasons (5):** employees taking leave are entitled to pay at $\frac{2}{3}$ their regular rate or $\frac{2}{3}$ the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period).

EXCEPTIONS NOTED:

- 1. Certain provisions may not apply to certain employers with fewer than 50 employees.
 - (i.e. government employees, see Department FFCRA regulations)
- 2. Under the Act, special rules apply for Health Care Providers and Emergency Responders.
- 3. Paid sick time provided under this Act does not carryover from one year to the next. Employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement, or other separation from employment.
- 4. An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave under this section.

IRS GUIDANCE:

- The IRS issued guidance stating that eligible employers claiming tax credits for qualified leave wages “must retain records and documentation related to and supporting each employee’s leave to substantiate the claims for the credits.”
- Such employers also must retain:
 - Form 941, Employer’s Quarterly Federal Tax Return
 - Form 7200, Advance of Employer Credits Due to COVID-19.
 - Any other applicable filings made to the IRS requesting the credit.

IRS GUIDANCE:

- The IRS guidance requires the same basic information that the employee provides for reason for the leave. This includes both caring for themselves or caring for another person.
- Additional information is requested for school closings or childcare providers who are unavailable.
 - The name and age of the child or children
 - The name of the school or place of care that has closed or is unavailable.
 - A representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave.
 - With the care of a child older than 14 during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

IRS GUIDANCE:

- The IRS guidance requires further guidance about additional documentation that employers claiming tax credits must maintain, including:
- Documentation to show how the employer determined the amount of qualified sick-and family-leave wages paid to employees, including records of work, telework, qualified sick leave and qualified family leave.
- Documentation to show how the employer determined the amount of qualified health plan expenses that it allocated to wages.

WEBSITES: FOR MORE INFORMATION

- www.dol.gov
- www.shrm.org
- www.tannerguin.law



Tanner & Guin

Law Firm

CAPITOL PARK CENTER
2711 UNIVERSITY BOULEVARD, SUITE 201
TUSCALOOSA, AL 35401

General Phone: (205) 633-0200

General Fax: (205) 633-0290

The Client Alert is for information purposes only and should not be construed as legal advice.

The information in this Client Alert is not intended to create and does not to create an attorney-client relationship.

Alabama State Bar requires the following: "No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers".