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BULLETIN

March 25, 2020 (UPDATE)

DOL RELEASES ADDITIONAL GUIDANCE (COVID-19)



On Tuesday, March 24th, the Department of Labor released [additional guidance](#) related to the Families First Coronavirus Response Act (Act) and other COVID-19 related employment issues. Here is a summary of the key updates:

Has anything significant changed since the original release of the Act?

- The effective date has been changed to April 1, 2020 (it was originally presumed to be April 2nd).

Can you remind me what the Act covers?

- The most significant provisions include pay and job protections for an employee's qualified leave of absence if the person is actively employed by a company with less than 500 employees and the employee is unable to work (or telework) for a reason related to COVID-19.
 - Two weeks (up to 80 hours) of expanded family and medical leave at **(100% of)** the employee's [regular rate of pay](#) where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis (maximum of \$511 per day, or \$5,110 total over the entire paid sick leave period); or
 - Two weeks (up to 80 hours) of expanded family and medical leave at 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 (pursuant to Federal, State, or local government order or advice 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 (maximum of \$200 per day, or \$2,000 over the entire two week period); and
 - Up to an additional 10 weeks of expanded family and medical leave at two-thirds the employee's [regular rate of pay](#) 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 (maximum of \$200 per day or \$12,000 for the twelve weeks that include both paid sick leave and expanded family and medical leave).
 - Under the above scenarios, employers would be eligible for a tax credit against the employer portion of social security taxes not to exceed the specified limitations.

If providing child care-related paid sick leave and expanded family and medical leave at my business with fewer than 50 employees would

jeopardize the viability of my business as a going concern, how do I take advantage of the small business exemption?

- To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations. You should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.

If we're in an area covered by a shelter-in-place or stay-at-home order, will our employees, who aren't working, be covered by the Act and receive payments?

- Maybe. Although the Department of Labor hasn't specifically addressed this issue, leading labor law attorneys have indicated that it's likely that employees could be eligible for 2 weeks of pay under the Act if the employee needs a leave of absence because he/she:
 - is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 (most likely including the shelter-in-place and stay-at-home orders issued in CA, IL, NY)
 - is unable to work (or telework) because of the quarantine or isolation orders
 - works for an employer that is not considered an essential business (i.e., employees working for an essential business would not be eligible)

If employees are furloughed prior to April 1st, will they be allowed to take leave under the Act?

- Probably not. The guidance we've received indicates that employees completely furloughed (working zero hours per week) would not be eligible because the reason they are not working is not due to a qualifying condition under the Act.

If employees have already had their pay reduced prior to April 1st, could this negatively affect them?

- Yes, it might but it depends on the new level of pay and any further Department of Labor guidance. We believe that companies who reduce employee pay prior to April 1st would use the new pay amount as the basis for calculating any required Paid Sick Leave or Paid FMLA under the Act.

Is that it? Will there be any new regulations or publications from the government before April 1st?

- Yes. At a minimum, the Department of Labor will release the model notice for companies to provide to their employees. However, it's also possible that we'll see additional fact sheets or FAQs.

Stay up-to-date with the latest material on our [coronavirus web page](#) - dedicated to sharing information about COVID-19 and how it relates to the workplace:

<https://www.employco.com/coronavirus>

We will continue to monitor the situation and provide updates throughout the process. We hope you and your family and friends are healthy.

Please [contact us](#) if you have any questions.



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