

COVID-19: FAMILIES FIRST CORONAVIRUS RESPONSE ACT

DEPARTMENT OF LABOR & INTERNAL REVENUE SERVICE WHITE PAPER

Following the passage of the Families First Coronavirus Response Act (FFCRA) on March 18, 2020, both the DOL and IRS have issued guidance in the form of frequently asked questions related to employee and employer responsibilities under the Act. This synopsis of the FFCRA will include DOL updates and new guidance as well as IRS FAQs for small and midsize businesses.

DOL Guidance

The DOL update includes revisions and clarifications to questions 1-37 of their initial guidance and provides a third round of new questions and answers (38-57) for employers and employees. Some of the key clarifications and additions included:

Furloughs: The DOL clarified that employees experiencing furloughs, reduced hours or closed worksites prior to or after the April 1, 2020 effective date would not be eligible for paid sick leave or expanded family and medical leave but may be eligible for unemployment. This applies to furloughs and closed worksites for reasons such as the employer experiencing a decline in business or pursuant to a government-mandated closure.

Medical Field Exclusions: The new guidance allows employers to exclude health care providers and emergency responders from both the paid sick leave and emergency family and medical leave. Under the FFCRA, the term “health care provider” includes anyone employed at doctor’s offices, clinics, medical schools, nursing and retirement facilities, labs, pharmacies, etc. An “emergency responder” is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19.

Required Documentation: Private sector employers that provide paid sick leave and expanded family and medical leave required by the FFCRA should retain appropriate documentation as defined by the IRS if they wish to claim tax credit. The guidance also states that employees must provide employers documentation in support of their paid sick leave, and requires a statement signed by the employee attesting to the facts underlying the need for leave. The statement must include information regarding the qualifying reason for leave and a reason why the employee is unable to work or telework. Additional requirements will apply depending on the qualifying reason for leave.

Non-enforcement Guidance: The DOL will observe a temporary period of non-enforcement for violations of the FFCRA through April 17, 2020, for employers who make a “good faith” effort to comply with the Act.

Additional clarifications and updates highlighted in the guidance include topics such as public sector employees, small business exemptions, employer refusal to offer leave, intermittent leave, and teleworking.

DOL Fact Sheets and Questions and Answer can be found at <https://www.dol.gov/agencies/whd/pandemic>.

IRS Guidance

Under the FFCRA, employers subject to the emergency paid sick leave and family, and medical leave provisions are entitled to fully refundable tax credits to cover the cost of the leave required to be paid for these periods of time during which employees are unable to work or telework.

The FAQ section provides guidance for employers on several topics related to tax credits, including:

- Determining the amount of credit available for qualified sick and family leave wages;
- How to claim credits;
- Information the employer should collect from employees to receive a tax credit;
- Periods of time for which credits are available;
- What employers may claim the tax credits.

The IRS information and FAQs can be found at <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#basic>.

Please be advised that any and all information, comments, analysis, and/or recommendations set forth above relative to the possible impact of COVID-19 on potential insurance coverage or other policy implications are intended solely for informational purposes and should not be relied upon as legal advice. As an insurance broker, we have no authority to make coverage decisions as that ability rests solely with the issuing carrier. Therefore, all claims should be submitted to the carrier for evaluation. The positions expressed herein are opinions only and are not to be construed as any form of guarantee or warranty. Finally, given the extremely dynamic and rapidly evolving COVID-19 situation, comments above do not take into account any applicable pending or future legislation introduced with the intent to override, alter or amend current policy language.