

## DOL ISSUES TEMPORARY REGULATIONS FOR THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT



On April 1, the day the Families First Coronavirus Response Act (“FFCRA” or the “Act”) went into effect, the U.S. Department of Labor (“DOL”) issued **temporary regulations** for the Act. The regulations answer a number of questions regarding the interpretation of the FFCRA.

Of particular note, the regulations interpret “quarantine or isolation orders” to include “a broad range of governmental orders, including orders that advise some or all citizens to shelter in place, stay at home, quarantine, or otherwise restrict their own mobility.” That being said, **if a business closes because of a shelter in place order, either because its customers are required to stay at home or because the order forced the business to close, and the employee cannot telework, the employee is not eligible for paid sick leave under the Act** (because the reason the employee cannot work is because the business was subject to the order, not because the employee was subject

to the order).

The regulations also provide clarifications and interpretations of the Act, including:

- The definition of “son or daughter” under both the paid sick leave and expanded FMLA leave **includes adult children** who are incapable of self-care due to a mental or physical disability. (This represents a change of the language of the FFCRA to effectuate consistency between the provisions.)
- Employers are **not required to compensate for unreported hours** worked while teleworking unless they knew or should have known the hours were worked.
- FFCRA sick leave may be taken if the employee is advised by a health care provider to self-quarantine **because the employee has, may have, or is “particularly vulnerable” to COVID-19.**
- If the employee is taking FFCRA sick leave because the employee is experiencing symptoms and awaiting a diagnosis, the leave may be taken only for the **time spent making, waiting for, and attending the appointment for diagnosis.** If the employee is unable to telework, the time may also be taken while awaiting results.
- The unpaid portion of the expanded FMLA leave applies to two weeks, not 10 days.
- Employees are only qualified to take FFCRA leave to care for a child whose school or place of care has closed, or whose childcare provider is unavailable, **if there is no other suitable person available to care for the child.**
- **Intermittent leave** may be agreed to by the employee and employer, including the increments of time the leave may be taken. Intermittent leave is available for all qualifying sick leave and expanded FMLA purposes if an employee is teleworking. If an employee is working at the worksite, intermittent leave may only be agreed to if the leave is to care for a child whose school or childcare is unavailable.
- Employees must provide their employer **documentation in support of the need for FFCRA leave**, including a signed statement with the following information: (1) the employee’s name; (2) the date(s) for which leave is requested; (3) the COVID-19 qualifying reason for leave; and (4) a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason. The employee must provide additional documentation depending on the qualifying reason for leave:
  - If based on an quarantine or isolation order, the employee must provide the name of the government entity that issued the order.
  - If based on a health care provider’s advice for the employee or a family member to self-quarantine, the employee must provide the name of the health care provider.
  - If based on caring for a child without school or childcare, the employee must provide:
    - The name of the child being cared for
    - The name of the school, place of care, or child care provider that closed or became unavailable due to COVID-19 reasons
    - A statement representing that no other suitable person is available to care for the child during the period of requested leave

For additional legal information regarding COVID-19, please visit our **COVID-19 Resources** website.

Hoge Fenton's Employment Law team is here to provide you with additional support throughout the COVID-19 pandemic. Please feel free to contact any of us below.



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