

NEW U.S. DOL GUIDANCE FOR EMPLOYERS REGARDING THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT



New U.S. DOL Guidance for Employers Regarding the Families First Coronavirus Response Act, Which Will Go Into Effect April 1, 2020

As discussed in Hoge Fenton's article last Thursday, March 20th ([click here](#)) and webinar last Friday, March 21 st ([click here](#)), Congress has created two new forms of paid leave benefits for employees who need time off for qualifying reasons due to COVID-19. The U.S. Department of Labor has now issued clarifications and guidance on the new law, and further guidance is expected in the coming days.

Click here to see the full list of FAQs and the DOL's expanded guidance. The DOL has also issued its FFCRA **model notice** that employers are required to post, along with **FAQs regarding the posting requirements**.

Here is an abbreviated summary of a few of the questions that have been answered:

What is the effective date of the Families First Coronavirus Response Act (FFCRA)?

The FFCRA will become effective on April 1, 2020, and will apply to leaves taken between April 1, 2020, and December 31, 2020.

How do I know if my business is under the 500-employee threshold and therefore must provide paid sick leave or expanded family and medical leave?

You have fewer than 500 employees if, at the time the employee takes the leave, you employ fewer than 500 full-time and part-time employees within the U.S., including employees on leave, temps who are jointly employed by you and another employer (regardless of whether they are on another employer's payroll, so including temps through an agency), and day laborers supplied by a temp agency. Where a corporation has an ownership interest in another corporation, the two corporations are separate employers unless they are joint employers pursuant to the "integrated employer test" under the FLSA.

If I have fewer than 50 employees and complying with the FFCRA would jeopardize the viability of my business, how do I take advantage of the small business exemption?

For now, you should document why your business meets the criteria set forth by the Department of Labor, which will be addressed in more detail in forthcoming regulations. In the meantime, you should not send any materials to the Department of Labor when seeking a small business exemption.

When calculating pay due to employees, must overtime hours be included?

Yes. The Emergency FMLA Expansion Act requires you to pay for hours the employee would have been **normally scheduled to work** even if that's more than 40 hours in a week. However, the Emergency **Paid Sick Leave Act** requires that paid sick leave be paid **only up to 80 hours** over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80. Importantly, while all overtime hours must be counted, the pay does not need to include a premium for overtime hours.

Again, please note that this is a summary only. **The DOL's FAQs** page answers additional questions and expands on the information provided above.

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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