

HR COMPLIANCE BULLETIN

Relaxed Enforcement Expected as Coronavirus Paid Leave Law Becomes Effective

The U.S. Department of Labor (DOL) has directed its field staff to observe a **temporary nonenforcement period** for the paid leave provisions of the Families First Coronavirus Response Act (FFCRA).

Issued on March 24, 2020, the DOL's [Field Assistance Bulletin No. 2020-1](#) (FAB) indicates that the agency will not take any enforcement actions against FFCRA-covered employers between March 18 and April 17, 2020, as long as these employers make reasonable, good faith efforts to comply with the law.

The FFCRA, enacted on March 18, 2020, requires employers with fewer than 500 employees to provide paid leave for their employees, either for the employees' own health needs or to care for their family members, for reasons related to the coronavirus (COVID-19) pandemic. According to the DOL, the agency will focus on helping employers come into compliance with the FFCRA during the temporary nonenforcement period. This Compliance Bulletin provides the DOL's guidance.

Action Steps

During this time, employers should:

- ✓ Become familiar with their obligations under the FFCRA and with the DOL's guidance regarding its enforcement of these provisions;
- ✓ Monitor the IRS' [Coronavirus Tax Relief](#) website;
- ✓ Closely monitor the [CDC](#), [WHO](#) and state and local public health department websites for information on the status of the coronavirus; and
- ✓ Consider measures that can help prevent the spread of illness, such as allowing employees flexible work options, like working from home.

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Highlights

Paid Leave Requirements

The federal coronavirus relief law requires employers to provide paid sick and family leave for COVID-19-related reasons, including lack of child care.

Temporary Nonenforcement

Until April 17, 2020, the DOL will not bring any FFCRA enforcement action against employers that make good faith efforts to comply with the law.

Good Faith Compliance

Employers that commit unwilful FFCRA violations may avoid enforcement actions by remedying the violations and committing to future compliance.

Information Resources

DOL Guidance

The DOL guidance that is contained in this document is available [here](#).

Other COVID-19 Guidance

- [CDC's COVID-19 Situation Summary](#)
- [WHO's COVID-19 advice for the public](#)

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DOL's Enforcement Guidance

The DOL will not bring enforcement actions against any public or private employer for violations of the FFCRA occurring within 30 days of its enactment, (March 18 through April 17, 2020), provided that the employer has made reasonable, good faith efforts to comply with the law. For purposes of this non-enforcement position, an employer who is found to have violated the FFCRA acts “reasonably” and “in good faith” when all of the following facts are present:

- The employer remedies any violations, including by making all affected employees whole as soon as practicable (as explained in a [Joint Statement issued on March 20, 2020](#), this program is designed to ensure that all covered employers have access to sufficient resources to pay required sick leave and family leave wages);
- The violations were not “willful” based on the criteria set forth in [McLaughlin v. Richland Shoe](#) (the employer “either knew or showed reckless disregard for the matter of whether its conduct was prohibited...”); and
- The DOL receives a written commitment from the employer to comply with the FFCRA in the future.

The DOL reserves its right to exercise its enforcement authority if the public or private employer either:

- Violates the law willfully;
- Fails to provide a written commitment to future compliance with the law; or
- Fails to remedy the violation upon notification by DOL, the employee seeking payment, or a representative of that employee, including by making all affected employees whole as soon as practicable.

After April 17, 2020, this limited stay of enforcement will be lifted, and the DOL will fully enforce violations of the FFCRA, as appropriate and consistent with the law.

Source: U.S. Department of Labor