



Department of Labor Issues Guidance on Families First Coronavirus Response Act and the Notice Employers Must Provide to All Employees

The following compliance update is provided to you by the Employment Law Group of Hill Ward Henderson:

Last week, the Families First Coronavirus Response Act (H.R. 6201) was signed into law. The Act was designed to provide American workers with relief in the forms of paid sick leave and expanded Family and Medical Leave Act ("FMLA") leave related to Coronavirus.

DOL "Guidance"

For the first time, the Department of Labor ("DOL") has issued guidance for employers and attempted to answer common questions the DOL has fielded since the law passed last week. Below are links to the DOL's new guidance:

- <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

Perhaps the most notable takeaway is the announcement that the law will go into effect on April 1st – one day earlier than most experts predicted. The guidance is also helpful in explaining how employers must calculate pay under the law and the interplay between the two forms of leave – paid sick leave and the expanded FMLA.

Other notable takeaways include:

1. Employers need to collect documentation from employees to verify their need for leave under the Act as support for the tax credits associated with paying sick leave. The guidance provides specific examples of documentation according to the type of leave taken.
2. Employees will not be eligible for any leave under the law if the employee's worksite is closed after the Act's effective date - whether for lack of business or because it was required to do so pursuant to a federal, state, or local stay at home directive (as opposed to an official quarantine or isolation order).
3. Employees are not eligible for leave under the new law during furloughs or temporary layoffs.
4. The circumstances in which the DOL considers employees to be "unable to telework" (as employees who are able to telework are not entitled to leave).

Unfortunately, however, the guidance still leaves many questions unanswered and may have created confusion in some areas such as how, if at all, different corporations' employees may be counted together in determining whether they meet the Act's larger business exemption (applicable to employers with 500 or more employees). By mentioning two substantially different tests to be considered for such "aggregation" of employees, an employer may actually be exempt under one law (more likely the expanded FMLA), but have to comply with the other (two weeks of paid sick leave). Hopefully, the DOL will provide much needed clarity in its regulations under the law, although further guidance is not expected before the law becomes effective on April 1st.



Notice to Employees

The DOL also issued the notice employers must distribute to employees to educate them on the new leave opportunities and requirements as well as guidance on how to distribute the notice. Employers can satisfy their notice obligations by:

1. Posting a notice in a conspicuous location in the workplace;
2. Directly emailing or mailing the requisite notice to each individual employee; or
3. Posting the notice on an employee information internal or external website.

Employers are not required to issue notices to recently laid off/terminated employees or to applicants. However, notices should be given to furloughed employees, even though they are not entitled to paid leave under the law.

Copies of the required notice and the DOL's guidance concerning the notice are available at:

- https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- <https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>

If you have any questions about these ongoing issues and how they may affect your business, please contact a member of Hill Ward Henderson's Employment Law Group:

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