

Federal Law Alert



From the HR Pros at the HR Support Center
April 9, 2020

FFCRA Updates and CARES Act Provisions

Families First Coronavirus Response Act

Since the enactment of the Families First Coronavirus Response Act on March 18, new information and guidance has been released every few days, though still much slower than employers would like. We have summarized what we believe to be the most relevant new information below. We will continue to update the HR Support Center multiple times per day to keep you informed, and we encourage you to visit the site regularly for updates.

Required FFCRA Poster

The Department of Labor (DOL) has released a [mandatory employee rights poster](#) for the FFCRA. It should be posted or distributed to employees electronically (via email or online portal) by April 1. More information on the requirements can be found [here](#).

Enforcement of FFCRA

The DOL will not bring enforcement actions against employers for violations of the FFCRA prior to April 17, 2020, **provided that the employer has made reasonable, good faith efforts to comply with the Act**. You can read more about the brief non-enforcement period [here](#).

New Guidance from the DOL on Administering FFCRA Leaves

We strongly suggest that employers read through the entire [Question and Answers document](#) prior to Wednesday, so they have an understanding of how the leaves work. The following are some highlights from the updated guidance:

- These leaves are not available to employees with reduced hours, furloughed employees, or employees' whose workplaces are closed. See questions 23-28.
- These leaves are not available to employees whose workplaces are closed due to a federal, state, or local shelter-in-place or stay-at-home orders, or due to business slowdowns. See question 23.
- These leaves (and payroll tax credit) are not retroactive. Employees are not entitled to pay under these leaves if they were absent or out of work (for any reasons) prior to April 1. See question 13.
- Both emergency paid sick leave (EPSL) and emergency Family and Medical Leave (EFMLA) can be taken on an intermittent basis in certain situations. See Questions 20-22 for explanations about when intermittent leave is allowed.
- Employees may not be required to use other forms of paid leave prior to or concurrently with EPSL or EFMLA. See questions 32 and 33.
- Employers should keep documentation to show that employees who received leave were actually in need of leave. The documentation requirements will be outlined in soon-to-be-released IRS guidance. See Questions 15 and 16.



Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

On Friday, March 27, the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The new law is a \$2 trillion economic stimulus package designed to repair the economic damage caused by COVID-19 and provide additional protection to individuals and businesses who may lose income due to the pandemic. While most of the act pertains to direct payments and loans, there are some sections that affect employers.

Providing Alternatives to Closure and Layoffs

The CARES Act gives employers the following options and benefits, which may allow them stay open and keep more people employed:

- Small businesses may be eligible for emergency grants of up to \$10,000 to cover immediate operating costs.
- The Small Business Administration (SBA) may provide loans of up to \$10 million per business; any portion of that spent to pay employees, keep workers on payroll, or pay for rent, mortgages, or existing debt could be forgiven, provided workers remain employed through the end of June.
- Small businesses with existing SBA loans may have up to six months of payments waived.
- Businesses who have experienced a decline in gross receipts of 50% as compared to the same quarter of 2019 or who have been fully or partially shutdown by order may be eligible to receive a refundable tax credit for 50% of *qualified* employee wages up to \$10,000 per employee. This is unrelated to the dollar-for-dollar payroll tax credit that can be taken for FFCRA leaves.
- Businesses may defer payment of employer payroll taxes imposed between the enactment of this law and December 31, 2020 with half of the deferred taxes due by December 31, 2021 and the rest due by December 31, 2022. This is unrelated to the dollar-for-dollar payroll tax credit that can be taken for FFCRA leaves.

We are unable to advise on these topics as they are outside the scope of our expertise. We encourage you to follow the [IRS Coronavirus Tax Relief](#) page and the [SBA Coronavirus Loan Resources](#) page, as well as consult with your tax professional or financial advisor. Detailed guidance on how to access these financial resources should be coming soon from those sources.

Impact on Unemployment Insurance

The act expands unemployment benefits by 13 weeks and adds \$600 to the weekly amount an individual would usually receive. While these unemployment benefits are generous, employers should still consider their options and incentives under the CARES Act mentioned above before making decisions about reduced hours, furloughs, or layoffs.

Employees who experience reduced hours, furloughs, or layoffs should be encouraged to file for unemployment insurance as soon as possible. We recommend that both employers and employees visit their state's unemployment insurance department website and track local and state news, as departments across the country are updating their rules to facilitate displaced workers during this time.