



July 28, 2020

United States Department of Labor Issues New Guidance on Families First Coronavirus Response Act

On Thursday, July 20, 2020, the U.S. Department of Labor issued guidelines concerning the return-to-work provisions of the Families First Coronavirus Response Act (“FFCRA” or “the Act”). Since going into effect on April 2, 2020, the FFCRA has provided emergency paid sick leave, and paid family leave for workers affected by COVID-19. The Act provides that employers with fewer than 500 employees must grant 80 hours of paid sick leave to workers who are required to quarantine because of exposure to COVID-19 or who are unable to work because of the closure of their child’s school or daycare center. In addition, the parents of children whose place of care is closed are granted up to 12 weeks of FMLA leave, 10 of which must be paid.

1. FMLA Leave for Furloughed Employees Returning to Work

The new guidance makes clear that furloughed employees are entitled to the remainder of their FMLA leave once they return to work. If an employee was eligible for FMLA leave, and use some of the leave time before being furloughed, the employee is entitled to use the remainder of the unused time upon returning from leave.

2. Work Positions of Employees Returning from Sick Leave

The new guidance also makes it clear that workers returning from leave after caring for a COVID-positive family member may be placed in roles that require minimal interactions with

coworkers and customers. Returning workers are entitled to the same or a substantially similar position they held before taking leave, but they may be required to telework or in a capacity that limits their physical interactions with coworkers. Employers are allowed to require employees to take COVID-tests before returning to work, but are advised to follow [guidelines](#) to avoid violating state and federal laws such as the Americans with Disabilities Act.

3. FFCRA Leave – Employer Retaliation

The Department of Labor’s guidance makes clear that employers may not discriminate or retaliate against employees for using FFCRA and cannot factor the need for FFCRA into employment decisions. Employers are expressly prevented from extending an employee’s furlough simply because the employee would need to take FFCRA if called to return to work.

Takeaway

The FFCRA provisions will continue until at least until Dec. 31, 2020. As states continue to gradually reopen, employers are advised to take the necessary precautions when reintegrating furloughed employees into their workforce. Many furloughed employees will be entitled to leave upon their return, and employers will have to maintain a delicate balancing act between setting a schedule to maintain a full workforce and providing employees with the leave federal law provides. We will keep you alerted to any changes in legislation, and are available to provide advice or design return to work policies.

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If you have any questions regarding this alert, please do not hesitate to contact us.

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