

# U.S. Department of Labor Issues Additional Guidance for Compliance with the Families First Coronavirus Response Act

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A FREEBORN & PETERS LLP CLIENT ALERT

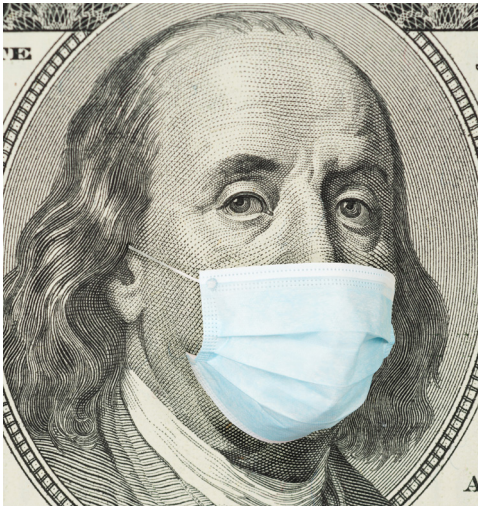
On March 24, 2020, the U.S. Department of Labor (DOL) issued an initial set of questions and answers (Q&A) concerning the recently enacted Families First Coronavirus Response Act (FFCRA), which will become effective on April 1, 2020 (a link to our prior alert discussing the FFCRA can be accessed [here](#)).

The Q&A focuses on the law's provisions relating to new emergency paid sick leave (EPSL) and expanded paid Family and Medical Leave Act benefits (FMLA+).



## The Q&A provides:

- The FFCRA applies only to private sector employers with fewer than 500 employees (including employees on leave, jointly employed temporary employees, and day laborers supplied by a temporary agency; but excluding independent contractors);
- Separate corporations or employer entities generally are each single employers for purposes of the 500-employee threshold, but common employees of joint employers under the Fair Labor Standards Act and integrated employers under the Family Medical Leave Act may be included in the count;
- Small businesses of fewer than 50 employees may be able to obtain an exemption if offering these leave benefits would jeopardize the viability of the business as a going concern. The DOL's guidance does not offer further information as to the exemption at this time, other than to say that employers should document why this standard applies to them (but not actually submit the documentation to the DOL at this time). The DOL indicates that detailed regulations will be forthcoming;
- The FFCRA applies to all employees on a covered employer's payroll (whether on a temporary or full-time basis) for the 30 calendar days immediately prior to the day an employee's covered leave would begin;
- The EPSL and expanded family and medical leave requirements for part-time employees are calculated based upon the average number of work hours in a 2-week period based upon the employee's "normal" schedule. If such schedule varies, employers may use a 6-month average (or for employment less than 6 months, the agreed upon hours or average hours during the term of employment);
- For calculation of an employee's emergency paid sick leave benefits, all scheduled weekly hours are counted, but the benefit is capped at 80 hours over a 2-week period – employees may not receive a "double benefit" for emergency paid sick leave (e.g., both for self-quarantine AND because a child's school is closed);



- If the EPSL is due to an employee's inability to work because (1) the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19; (2) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (3) is experiencing symptoms of COVID-19 and seeking medical diagnosis, the paid benefit is the employee's regular rate of pay (or federal or state minimum wage, if greater) up to a maximum of \$511/day or \$5,110 in the aggregate;
- If the EPSL is due to an employee's inability to work because the employee is caring for an individual who is subject to a federal, state, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; caring for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services, the paid benefit is two-thirds of the employee's regular rate of pay (or federal or state minimum wage, if greater) up to a maximum of \$200/day or \$2,000 in the aggregate;
- The paid expanded family and medical leave benefit is calculated at no less than two-thirds of the employee's regular rate of pay (or federal or state minimum wage, if greater) for the employee's normally-scheduled work hours, capped at \$200/day or \$12,000 in the aggregate over the 12-week period including both EPSL and expanded family and medical leave (employees may take emergency paid sick leave -- or other accrued employer-sponsored PTO -- for the first 10 unpaid days of the expanded family and medical leave period);
- The FFCRA does not now require all FMLA leave to be paid -- only such leave that is covered by the expanded family and medical leave because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.
- An employee's regular rate of pay is an average over a period of up to six months prior to the leave date, including commission, tips and piece rates, as applicable;
- The requirement for EPSL is in addition to any employer-provided paid leave prior to the effective date of the FFCRA (April 1, 2020);
- The FFCRA is not retroactive to otherwise covered leave prior to April 1, 2020.

Employers also will be required to post a DOL-provided poster, which is forthcoming. For those employers who have closed and furloughed employees, or who have employees working remotely due to the COVID-19 pandemic, it is recommended that they post the DOL notice on their intranet or otherwise provide electronically to their employees. In the interim, it is recommended that employers post (physically and/or electronically) the DOL employee fact sheet found here: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

Although the DOL's Q&A provides additional information concerning FFCRA, further guidance and regulations implementing these laws are expected in the near future.

**This is a rapidly evolving area of the law,  
so stay tuned for more developments on [Freeborn's COVID-19 webpage](#).  
If you have questions, please contact the authors of this alert.**

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