



COVID-19 Benefits Compliance Updates & FAQ

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Please note that the following is intended to be used for general guidance purposes only — it is not intended to constitute legal advice, nor is it a dispositive position on coverage. Each claim is subject to review by the applicable insurer and coverage is dependent upon the terms and conditions of your specific insurance policy.

COVID-19 Benefits Compliance Updates & FAQs

AGENDA

1. Families First Coronavirus Response Act – New Regulations and FAQs
2. Current Issues
3. Questions (Q/A Session)

****Disclaimer:** The information presented here is current as of April 7, 2020. The government is frequently providing new guidance, and we will address new guidance each week.

Families First Coronavirus Response Act (FFCRA) – New Regulations and FAQs



FFCRA – New Regulations

DOL Temporary Regulations and FAQ

Covered Employers: Those with under 500 employees *at the time the leave is to be taken*

The employer should include:

- *Full-time and part-time employees, employees on leave, temporary employees who are jointly employed by the employer and another employer, and day laborers supplied by a temporary placement agency*

Who does not count towards the 500 threshold:

- *Independent contractors that provide services for an employer do not count towards the 500-employee threshold*
- *Employees who have been laid off or furloughed and have not subsequently been reemployed.*

- **When is an employer subject to the FFCRA?**
 - Which employees are counted when determining the “fewer than 500” threshold?
 - What about furloughed employees?
- **How do employers count employees under FFCRA?**
 - What about joint employers?
 - Does the integrated test under FMLA apply?

FFCRA – New Regulations

DOL Temporary Regulations and FAQ

- Employee Eligibility: Emergency Paid Sick Leave (EPSL)
 - An employee is unable to work because he or she is subject to a Federal, State, or local COVID-19 quarantine or isolation order
 - *Quarantine or isolation orders include orders that advise some or all citizens to shelter in place, stay at home, quarantine, or otherwise restrict their own mobility*

- How does an employee qualify for EPSL?
 - Can an employer require an employee to use other accrued sick leave before the paid sick leave?
- How does an employee qualify for Emergency Family and Medical Leave Expansion Act (EFMLEA)?
 - Can an employer require my employees to take existing paid leave concurrently with EFMLEA?

FFCRA – New Regulations

DOL Temporary Regulations and FAQ

- Calculating Pay

- Calculating Per Hour Pay under EPSL
- Calculating Per Hour Pay under EFMLEA

- How does an employer calculate pay for employees taking EPSL?
- How does an employer calculate pay for employees taking EFMLEA?

FFCRA – New Regulations

DOL Temporary Regulations and FAQ

The small employer exemption:

- *Exempts small private employers with fewer than 50 employees*
- *From having to provide an employee with paid sick leave and expanded family and medical leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable*
- *When such leave would jeopardize the viability of the business*

- Which employers can use the exemption?
- Which qualifying reasons can be exempt?
- How often can an employer apply an exemption?
- How do exemptions under the FFCRA work?
- Does an employer need documentation to record an exemption?
- What about exclusions?
 - What is a “health care provider” under the FFCRA?
 - What is an “emergency first responder” under the FFCRA?

FFCRA – New Regulations

DOL Temporary Regulations and FAQ

An employee must provide his or her employer documentation in support of paid sick leave or expanded family and medical leave:

- *A signed statement containing the following information: (1) the employee's name; (2) the date(s) for which leave is requested; (3) the COVID-19 qualifying reason for leave; and (4) a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason.*

Documentation Overview

- Employer Notice
- Employee Documentation
- Employer Documentation
- Tax Credit Documentation (bonus IRS FAQ)
- Record Retention

- Are employers required to post a FFCRA Notice?
 - What if the employer employs health care providers or emergency first responders?
- What documentation does an employee need to provide in order to obtain EPSL?
- What documentation does an employee need to provide in order to obtain EFMLEA?
- What documentation does an employer need in order to obtain a tax credit?
- How long does an employer need to maintain records?

CURRENT ISSUES



Current Issues

New Enrollment Opportunities

- *Many carriers are providing a “special enrollment” onto the plan for employees who previously waived coverage*

Increasing Employee Contributions

- *Some employers are looking to increase employee’s contributions to 100% as cost-saving measures due to the hardships of the public health crisis*

- If a carrier is permitting employees to enroll outside of open enrollment, is this permitted?
- Can an employer increase an employee’s contributions to 100% mid-year?

Current Issues

Changing FSA Elections During Furlough

Duration of CARES Act Provisions

- *Telehealth can be provided without cost-sharing without endangering HDHP status or HSA eligibility*
- *Over-the-counter drugs and menstrual products can be reimbursed from HSAs, HRAs, and FSAs*

- Can employees change FSA elections during a furlough?
 - Can employees change DCAP elections?
- Are the provisions relating to telehealth and account-based plans in the CARES Act temporary?

Current Issues

Length of EFMLEA

- *Employees may take a total of 12 workweeks for FMLA or expanded family and medical leave reasons during a 12-month period*

FFCRA and Nonprofits

Federal Employees and FFCRA

- Does the EFMLEA increased the amount of time an employee can take under FMLA?
- Do the provisions of FFCRA apply to nonprofits?
- Do the provisions of FFCRA apply to federal employees?

Resources:

FFCRA	https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf
FFCRA Q&A	https://www.dol.gov/agencies/whd/pandemic/ffcra-questions
FFCRA Nonenforcement Bulletin	https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1
FFCRA Model Notice Federal.pdf	https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
FFCRA Notice FAQs	https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions
CARES Act	https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf
FFCRA Rules:	https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act
IRS Tax Credits FAQs:	https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#substantiate_eligibility

Visit our Latest Insights page for more COVID-19 coverage

<https://www.nfp.com/about-us/news-perspectives/latest-insights?pagename=latest-insights>



Questions and Answers



Tomorrow's Webinar: COVID-19 HR Solutions Updates & FAQs

https://nfp.zoom.us/webinar/register/WN_v7PxVzb3QgeVzUolZw1Jiw

