



March 24, 2020

COVID-19's Impact on Employers: DOL's Q&A and Answers to Frequently Asked Questions Regarding the FFCRA (Update #1)

The GrayRobinson Labor & Employment Practice Group is committed to providing you with the best information available on the ever-changing events surrounding COVID-19 and its impact on Florida's employers.

The Department of Labor has now [issued its Q&A regarding this act](#). It answers questions regarding the effective date (now interpreted to be **April 1, 2020**), how to count employees, how a small business (fewer than 50 employees) may qualify for an exemption, how to calculate the amount of paid sick leave, the total amount of leave available, and who is an eligible employee. The DOL guidance also confirms that the FFCRA is not retroactive. This Q&A is guidance, not the regulations, which are still forthcoming. We also expect the model notice to be issued on March 25, 2020, which must be posted by all covered employers beginning on April 1, 2020.

We have compiled some of the frequently asked questions and answers that we have received regarding COVID-19 and the FFCRA. To assist you in the implementation of this law, we will be sending out some of these questions and answers over the next week. However, as these issues are multi-faceted and fact-specific, we encourage you to reach out to us to help you navigate these difficult issues.

1. [When does the FFCRA go into effect?](#)

April 1, 2020. The Department of Labor has [issued a press release](#) indicating that it intends to observe a 30-day period of non-enforcement for employers who engage in reasonable, good-faith efforts to comply with the FFCRA.

The FFCRA provides two paid leave components – the expansion of the FMLA for certain childcare responsibilities related to COVID-19 and the Emergency Paid Leave

Act (PSL) for six qualifying reasons. These two acts apply to any public agency with one or more employees and to any private entity with fewer than 500 employees.

2. **Will small businesses be exempt from FFCRA once the Secretary issues regulations?**

With respect to businesses with fewer than 50 employees, the Act authorizes the DOL to issue regulations to exempt these businesses from providing paid leave under the FMLA or paid leave under the PSL related to childcare (not the other 5 qualifying reasons) when it would jeopardize the viability of the business. It is unclear whether the DOL will provide any guidance that expands the exemption available to small businesses. The DOL has indicated that it intends to publish these regulations in April 2020.

If an employer did not meet the definition of a covered employer under the FMLA (an employer with 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding year) prior to the FFCRA, then it is not subject to a private lawsuit by an employee under the expanded FMLA. However, an employee may file a complaint with the DOL and seek enforcement by the Secretary of Labor. There is no immunity from suit under the PSL, which may be brought under the FLSA.

3. **Are there any other regulations that can we expect from the Secretary?**

Under the Act, the Secretary is further empowered to issue regulations excluding certain health care providers and emergency responders from the definition of eligible employee under the FMLA and PSL. The Secretary also is empowered to issue regulations "as necessary, to carry out the purposes of this Act." It is unclear at this time whether the Secretary may provide additional guidance to assist employers in implementing this act, including whether the act provides an additional 12 weeks of leave to an employee who otherwise has exhausted his or her unpaid FMLA. We expect these regulations to be issued in April 2020, but the DOL has not provided any specific date. The DOL currently is accepting comments and questions through March 29, 2020 [here](#). The DOL also is hosting a Twitter chat at 2:00 p.m. on March 25, 2020, at @ePolicyWorks using the hashtag #EPWChat.

The DOL has published some [limited guidance explaining an employee's rights](#) and an [employer's obligations](#). These documents restate the requirements of the FFCRA.

4. **What economic resources are available to businesses to help them survive during the COVID-19 pandemic?**

The FFCRA provides for payroll tax credits for paid sick leave and health insurance coverage provided by employers under the FFCRA. Self-employed individuals also are entitled to an equivalent credit. It also provides an immediate dollar-for-dollar tax offset against payroll taxes and, when funds are owed, the IRS will send the refund as quickly as possible. In certain circumstances, employers can apply for an advance from the IRS to obtain funds to provide the paid leave. The IRS has [issued a press release explaining some of the benefits that are available](#).

The state of Florida also has several programs available, especially for small businesses, including:

- [Florida Small Business Emergency Loan Program](#)
- [Florida Short-Term Compensation Program for Employees](#)

The United States Small Business Administration also has a [disaster loan program](#).

5. **How are other agencies handling enforcement and operations during COVID-19?**

Equal Employment Opportunity Commission

All employees are teleworking, and the EEOC is conducting charge intake, mediation, and witness interviews by telephone.

The EEOC is [posting a prerecorded webinar on its website](#) on the afternoon of March 27, 2020. No registration is necessary for this webinar. The EEOC will address questions under the ADA, ADEA, Title VII, and GINA. Participants may submit questions by e-mail to the EEOC until 9:00 p.m. on March 25, 2020.

National Labor Relations Board

It has suspended all representation elections through April 3, 2020, and it has delayed implementation of its final rule modifying its Representation Case Procedures until May 31, 2020. Most of the employees are teleworking with the Tampa office closed and the Miami office open with limited hours.

Florida Commission on Human Relations

The office is closed to visitors until April 19, 2020, but the employees can be reached by telephone or e-mail.

Public Employees Relations Commission

The office is closed to the public, but the parties can still file pleadings by mail, fax, or e-PERC. PERC has canceled all hearings through May 5, 2020, and will reschedule them for a later date.

Questions?

Contact the GrayRobinson **Labor and Employment** Team.

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