

# DOL Provides Initial Guidance and Sample Posting on New Paid Leave Laws

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03.26.2020

The U.S. Department of Labor (“DOL”) has issued a press release linking to published guidance that clarifies several key points regarding the expanded Family and Medical Leave and Paid Sick leave provisions of the Families First Coronavirus Response Act (“FFCRA”). The DOL sets the effective date for the FFCRA on Wednesday, April 1, 2020 (one day earlier than the last day allowed by the legislation).

Employers with fewer than 500 employees must post a notice of employees’ rights under the paid sick leave provisions no later than that date, and the DOL has provided a form poster for employers to use.

The DOL’s initial guidance includes a Fact Sheet for Employers as well as a Questions and Answers document. The Q&A clarifies that for purposes of counting employees, employers should assess their workforce at the time the leave is to be taken and should include employees on leave, temporary employees jointly employed by another employer (even if they are on the other employer’s payroll), and day laborers supplied by a temporary agency. It points to the FLSA joint employment standard for purposes of the paid sick leave requirements and the FMLA integrated employer test for purposes of the emergency FMLA requirements.

The Q&A also provides detail regarding how to calculate payments for part time employees and employees who work overtime. Regardless of how many hours an employee works in a two week period, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80. The Q&A also clarifies that the regular rate of pay is averaged over a period of up to six months prior to the date on which the employee takes leave and includes commissions, tips, and piece rates.

The Q&A additionally clarifies that employees may not take more than two weeks of paid sick leave, even if they experience more than one event that would qualify for the leave. For example, an employee who has taken two weeks of paid sick leave to care for a child who is home from school may not later take additional paid sick leave because they are experiencing symptoms of COVID-19 and seeking a diagnosis.

The Q&A also explicitly states that employers may not count paid sick leave provided before April 1, 2020 against the emergency paid sick leave and eFMLA requirements of the FFCRA.

Formal regulations are expected in April, and we will continue to monitor and provide updates.

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