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Employer Update: DOL Paid Sick and Family Leave Guidance

Last week President Trump signed into law the Families First Coronavirus Response Act (“FFCRA”) providing, among other things, paid sick leave and paid family leave for qualifying employees related to COVID-19. For a detailed description of those paid sick and family leave provisions, please see our previous [update](#).

We still await the Department of Labor’s (DOL) highly anticipated regulations, which should clarify covered employers’ obligations under the FFCRA. The DOL and the Internal Revenue Service (IRS), however, recently have shared guidance related to the Act. Notably, the DOL now has confirmed these paid sick leave and family leave provisions will go into effect on **Wednesday, April 1, 2020** (instead of April 2nd, as many anticipated). Additional guidance is highlighted below:

Required FFCRA Workplace Poster

The FFCRA stipulates all covered employers must post a notice informing employees of their sick leave rights under the Act and the DOL will provide a model notice. The model notice, just released, can be found [here](#). The notice provides an overview of the FFCRA’s key provision, including:

- Paid leave entitlements;
- Eligible employees;
- Qualifying reasons for leave related to COVID-19; and
- DOL’s enforcement of these provisions.

Covered employers under the FFCRA should promptly post this notice in a conspicuous location in their workplace. Employers also should email a copy to those employees already absent from their facility.

DOL Guidance on Paid Sick Leave and Family Leave

To assist employers and employees while it prepares its regulations, the DOL also published a [Q&A](#) of common questions regarding the FFCRA's paid sick leave and family leave provisions. Some notable takeaways include:

- The paid sick and family leave provisions will go into effect on April 1, 2020 (Question 1);
- The DOL will utilize the joint employer and integrated employer tests (already used under the FMLA) to determine if employers meet the 500-or-less employee threshold (Question 2);
- The forthcoming DOL regulations will address the FFCRA's small business exemption (Question 4);
- When calculating pay due to employees, overtime hours must be included under the paid family leave provision, but not under the paid sick leave provision (due to the 80-hour cap under the sick leave provision). Also, for paid sick leave, if an employee is regularly scheduled to work more than 40 hours/week, the employee may receive more than 40 hours of sick leave pay in the first week of leave, but the total number of hours is still 80. The employee then would have less than 40 hours after the first week (Question 6);
- The total amount of paid sick leave (80 hours) may be used for a combination of qualifying reasons, but leave is capped at 80 hours for all reasons (Question 9);
- Paid sick leave and paid family leave may overlap. If the employee qualifies, paid sick leave may cover the first two weeks (or 80 hours) of paid family leave, but an employee is only permitted a total of 12 weeks of paid leave (Question 10);
- Paid leave is not retroactive. Employers cannot receive credit for paid leave given prior to the effective date of the FFCRA (Question 13).

IRS Guidance on Employer Tax Credits

Finally, the IRS issued a [press release](#) with additional details on the employer tax credits provided in the FFCRA. Several key takeaways include:

- Eligible employers are entitled to 100% reimbursement for any payments made to employees pursuant the FFCRA, including payments under both the paid sick leave and paid family leave provisions;
- Employers will be reimbursed through a reduction in the employer's quarterly payroll taxes (IRS Form 941);
- Employers are entitled to an additional tax credit for the cost of maintaining employee health benefits while the employee is on leave;
- Employers face no payroll tax liability for qualifying payments;
- If there are not enough payroll taxes to cover the cost of paid leave payments, employers may file a request for an accelerated payment from the IRS.

The press release also provides helpful examples describing how the tax credits will work in practice. For now, the tax credit applies to employer payments made between April 1, 2020 and December 31, 2020.

As additional guidance and DOL regulations become available, Frost Brown Todd will continue to update you on your FFCRA obligations. For more information or questions relating to this specific article, please contact [Jeff Lindemann](#), [Jeff Shoskin](#), [Catherine Burgett](#), [Steve Tolbert](#), or any attorney in Frost Brown Todd's [Labor & Employment Practice Group](#).

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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