

DOL Issues Revised FFCRA Leave Rules

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The U.S. Department of Labor (DOL) issued revised regulations on the Families First Coronavirus Response Act's (FFCRA's) paid-sick-leave and paid-family-leave provisions, clarifying when leave is available and when employees must seek approval to take leave.

The revisions follow a ruling from the U.S. District Court for the Southern District of New York that invalidated portions of the DOL's April 1 temporary rule. According to the agency, [the revisions](#), which take effect immediately upon publication in *The Federal Register* on Sept. 16, do the following:

- Reaffirm that employees may take FFCRA leave only when work is actually available to them.
- Reaffirm that employees must have their employer's approval to take intermittent FFCRA leave.
- Revise the definition of "health care provider" to include "only employees who meet the definition of that term under the Family and Medical Leave Act regulations or who are employed to provide diagnostic services, preventative services, treatment services or other services that are integrated with and necessary to the provision of patient care which, if not provided, would adversely impact patient care."
- Clarify that employees must provide employers with documentation as soon as possible supporting their need for FFCRA leave.
- Correct an inconsistency on when employees may be required to provide employers notice of their need to take expanded family and medical leave.

The revisions also address the district court's order by providing additional explanations for certain requirements.

"As the economy continues to rebound, more businesses return to full capacity and schools reopen, the need for clarity regarding the Families First Coronavirus Response Act paid-leave provisions may be greater than ever," said DOL Wage and Hour Administrator Cheryl Stanton. "Today's updates respond to this evolving situation and address some of the challenges the American workforce faces," she said.

Emily M. Dickens, SHRM's corporate secretary, chief of staff and head of government affairs, said, "Employers need clear, concise and consistent policies to manage the challenges presented by this public health crisis while supporting their employees. We appreciate the department's timely revisions as they provide much needed clarity at a critical time."

We've rounded up resources and articles from *SHRM Online* and other trusted outlets on the news.

Judge Strikes Down Several DOL Interpretations

On Aug. 3, Judge J. Paul Oetken found that the DOL's interpretation of FFCRA legislation unlawfully excluded too many health care workers from the act's paid-sick-leave and paid-family-leave mandates. Oetken also struck down a provision that allows employers to deny leave when they don't have work available, as well as provisions that require workers to provide documentation before taking leave and seek management approval before taking intermittent leave.

[\(Bloomberg Law\)](#)

DOL Addresses Inability to Work and Intermittent Leave

The DOL disagreed with some of Oetken's reasoning and reaffirmed that FFCRA leave is only available if the employer has work available for the employee. The department explained that "if there is no work for an individual to perform due to circumstances other than a qualifying reason for leave—perhaps the employer closed the worksite (temporarily or permanently)—that qualifying reason could not be a but-for cause of the employee's inability to work." The DOL said that the term "leave" is understood to mean "an authorized absence from work; if an employee is not expected or required to work, he or she is not taking leave."

The DOL also reaffirmed that intermittent leave can only be taken with an employer's approval and clarified the difference between intermittent leave and consecutive requests for leave. The department said that "the employer-approval condition would not apply to employees who take FFCRA leave in full-day increments to care for their children whose schools are operating on an alternate day (or other hybrid-attendance) basis because such leave would not be intermittent. In an alternate day or other hybrid-attendance schedule implemented due to COVID-19, the school is physically closed with respect to certain students on particular days as determined and directed by the school, not the employee." So each day the school is closed creates a separate reason for FFCRA leave that ends when the school opens again for that student.

[\(Jackson Lewis\)](#)

FFCRA's Paid-Leave Options

FFCRA has two major provisions: the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA). Under the EPSLA, employers with fewer than 500 employees and some public employers must pay sick leave of up to 80 hours, or roughly 10 days, to full-time employees who need to take leave for certain coronavirus-related reasons. Employees may be eligible for an additional 10 weeks of family leave paid at two-thirds of their regular wages under the EFMLEA to care for a child whose school or place of care is closed or whose child care provider is unavailable because of COVID-19. The FFCRA [does not have requirements for private-sector employers with 500 or more employees](#).

[\(SHRM Online\)](#)

DOL Provides Clarity on FFCRA Child Care Leave

Working parents are facing myriad challenges as children resume their studies in alternative formats due to the continuing COVID-19 crisis. In what situations are employees eligible for child-care-related leave or unemployment benefits? The DOL tackled some frequently asked questions in its most recent guidance. Notably, the department said employees are not eligible for FFCRA leave or unemployment benefits if they made the choice to keep their children home.

[\(SHRM Online\)](#)

Local Laws May Provide Additional Leave

Employers and workers alike should check state and local laws for additional leave eligibility and requirements. For example, in California's Alameda County, workers in certain high-risk areas who test positive for COVID-19 and aren't receiving unemployment benefits or paid sick leave can collect a one-time \$1,250 [stipend to self-quarantine](#) for 14 days. "The county understands that sheltering in place while diagnosed with COVID-19 should not be a privilege to only those who can afford it," said Alameda County Administrator Susan Muranishi.

([CNBC](#))