

DOL cites businesses illegally denying FFCRA leave



Businesses denying employees leave under the Families First Coronavirus Response Act (FFCRA) have found themselves under the Department of Labor's (DOL) ire. Because of the generally low dollar amounts in question, attorneys have not been quick to take up the cases of employees who claim they were illegally denied FFCRA leave. This left the DOL to investigate claims and enforce the rule, which it has been quick to do. As a reminder:

The FFCRA requires employers of fewer than 500 to provide:

- Up to 80 hours of **paid sick leave** for employees sick or quarantining due to COVID-19.

- Up to 80 hours of partially **paid sick leave** for employees to care for someone with COVID-19 or to care for a child whose school or childcare provider is closed or unavailable for reasons related to COVID-19.
- Up to 10 weeks of partially **paid expanded family and medical leave (FMLA)** to employees who must care for a child whose school or childcare provider is closed or unavailable for reasons related to COVID-19.

The U.S. DOL cites employers for failing to follow the paid leave provisions of the FFCRA

Below are just a few examples of employers who have already been cited by the DOL and forced to provide back pay to employees.

- **Quarantine ordered:** When a Montana healthcare employee was ordered to quarantine by his doctor, his employer denied him paid leave. The DOL has ordered the employer to pay \$1,600 in back wages.
- **Daycare center closed:** An Atlanta company had to pay an employee \$1,153 in back wages after being denied time off because her child's daycare center closed due to the pandemic.
- **Distance learning:** The DOL ordered an Alabama janitorial services company to pay \$2,066 in back wages after the employer wrongly denied paid leave to an employee who missed work to care for her children, who were distance learning at home.
- **Positive coronavirus test followed by self-quarantine:** A Florida landscaping company was ordered to pay \$1,200 in back wages after wrongly denying emergency paid sick leave to an employee who self-quarantined after receiving a coronavirus diagnosis.

The law includes limited exemptions

All businesses should take any FFCRA related leave requests seriously as the DOL has been ready and willing to enforce employee complaints. However, the law does have limited exemptions that employers should be aware of.

- Healthcare providers and emergency responders are not required to be given any paid leave.
- An employee must have been employed for 30 calendar days in order to qualify for paid expanded family and medical leave.
- An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing paid sick leave and expanded family and medical leave due to school/daycare closures if it would jeopardize the viability of the small business by meeting at least one of the criteria below.
 - The provision would result in the business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity.
 - The absence of the employee requesting leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities.
 - There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee requesting leave, and these labors or services are needed for the small business to operate at a minimal capacity.

Online Resource: For more information on these exemptions, see the DOL's [FFCRA FAQ](#).

The DOL revised regulations in September

The U.S. Department of Labor's Wage and Hour Division on Sept. 11 issued revised regulations affecting the paid sick leave and expanded family and medical leave provisions of the Families First Coronavirus Response Act. The changes were prompted by an Aug. 3 federal court ruling that found portions of the original regulations

invalid.

Among the most important revisions to the regulations, which took effect Sept. 16:

Intermittent leave. As enacted, the FFCRA didn't cover paid intermittent FMLA leave. However, the implementing regulations did and required employees to seek their employer's permission to take it.

The revisions: The DOL explains that seeking an employer's permission to take intermittent leave is consistent with longstanding FMLA principles. Taking intermittent leave, the DOL says, must be weighed against disruption it might cause to an employer's operations. Seeking employer permission for intermittent leave, therefore, is appropriate.

Definition of 'health care provider.' The original regs were vague - denying paid leave to almost anyone performing work for any organization connected to providing health care or teaching medicine.

The revisions: The definition of "health care provider" has been limited to workers who provide diagnostic, preventive, and treatment services or other services that are necessary for caring for patients. Included are physicians, nurses, nurse practitioners, nurse assistants, and medical and lab technicians. They do not qualify for the FFCRA's paid leave provisions.

Not included are ancillary staff at medical organizations, such as accounting, HR and information technology professionals, cooks, and records managers. They qualify for the FFCRA's paid leave provisions.

Documentation requirements. The original regs required employees, before taking leave, to present documentation of their need for leave, the likely duration, and the authority of whatever entity ordered isolation or quarantine.

The revisions: Under the revised regs, employees don't have to provide documentation before taking leave. Documentation may be provided as soon as practicable.

Online resource: Read the [revised regulations](#).