

Following up on yesterday's article, the SBA (Small Business Administration) has changed its site for receiving applications for their Disaster Assistance Loans. The guidance, as of this morning, is to complete the fillable pdf forms available at their site and upload them at the site, rather than their previous online application process.

Today, I'll try to address how the virus is impacting the employees of small businesses, since there is a lot of conflicting information out there. This will deal with the Families First Coronavirus Response Act Impact (FFCRA). In the past, small businesses have not been required to provide paid leave. That appears to have changed, at least temporarily.

My Key Takeaways:

1. Businesses with fewer than fifty (50) employees are being required to provide paid time off for reasons of the virus.
2. All businesses need to post the poster found at https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf in a prominent place in their workspace.
3. Your reimbursement for the paid time off will be in the form of tax credits against your payroll or income taxes, so it may take a long time before you receive it. For that reason, I encourage you to apply for the Disaster Assistance loans that I've mentioned in earlier correspondence.

I've included below from some of the sources I've used to compile this information, and encourage you to visit their sites for more information.

"On March 18, 2020, President Trump signed into law an economic stimulus plan that aims to address the impact of COVID-19 on Americans. This law, known as the Families First Coronavirus Response Act, is effective April 2, 2020 through December 31, 2020. According to the Congressional Research Service of the Library of the Congress, "th[e] bill responds to the coronavirus outbreak by providing paid sick leave and free coronavirus testing, expanding food assistance and unemployment benefits, and requiring employers to provide additional protections for health care workers."

This Act requires certain employers, which generally means employers who employ less than 500 employees, to provide employees with paid leave if they are affected by COVID-19 under certain circumstances. Employers who pay out such benefits will receive tax credits to offset the cost of providing this paid leave." [1]

Here is what my research on the impact on smaller businesses (under 50 employees) has uncovered.

"Q: My Company has under 50 employees total; am I automatically exempt from providing paid leave?"

A: No. The FFCRA gives the Department of Labor the authority to exempt small businesses if the imposition of the requirements under the EPSLA or the EFMLEA would jeopardize the viability of the business as a going concern, however the FFCRA itself does not automatically exempt small businesses.

4. Q: My company has under 50 employees total; how can I obtain an exemption from the Department of Labor?

A: This has not yet been addressed in the FFCRA. While the DOL guidance notes that employers should “document why your business with fewer than 50 employees meets the criteria...” no further information has been provided as of yet. We will continue to monitor this point and provide follow up guidance as it becomes available. “[2]

Given the above, this is what the act requires:

Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined

Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee has to provide care to their children or loved ones who have contracted the virus. Here is some text from the Department of Labor's website:

“Generally, the Act provides that covered employers must provide to all employees:[2]

- Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

A covered employer must provide to employees that it has employed for at least 30 days:[3]

- Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Covered Employers: The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees.[4] Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

Qualifying Reasons for Leave:

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis,
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2),
5. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19, or
6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19."^[3]

Note: The information provided here does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available are for general informational purposes only.

[1] Anthony J. Madonia & Associates, Ltd

[2] Jennifer R. Budoff, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

[3] https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave#_ftn2

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