



## DOL Wage & Hour – Temporary Rule on FMLA & Paid Sick Leave

### **Background:**

April 6, 2020, the Department of Labor (DOL) Wage and Hour Division promulgated temporary regulations to implement public health emergency leave under the Family and Medical Leave Act (FMLA) and emergency paid sick leave to assist working families facing public health emergencies arising from the COVID-19 pandemic. The provisions under this temporary rule is in effect until December 31, 2020 and will not affect the FMLA after the expiration date. This temporary rule went into effect on April 1, 2020.

There are several clarifications in this temporary rule including, who counts as an employee. The rule is clear that an employer should include in their count:

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- Full-time and part-time employees;
  - Employees on leave;
  - Temporary employees employed by the employer and another employer; and
  - Day laborers supplied by a temporary placement agency.

The list of folks that do not count towards the 500-employee limit include:

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- Independent contractors;
  - Laid off or furloughed employees who have not been rehired; and
  - Employees not working in the one of the 50 States, Washington, DC or a U.S. Territory.

Additionally, the definition of “son and daughter” has been amended to include not only children under 18 years of age, but also children age 18 or older who are incapable of self-care because of mental or physical disability.

Furthermore, the temporary rule makes it clear that “telework” is no less work than if it were performed at an employer’s worksite. Employees who are teleworking because of COVID-19 reasons must maintain hours and be compensated for those hours, including overtime, in accordance with the Fair Labor Standards Act. The employers must be aware and notified that the employee is teleworking for this to take effect.

## **Provisions included in the FFCRA:**

### Family Medical Leave Act

- Covers Employers with 500 or Fewer Employees
- Employee Must Be Employed for 30 Days to Be Eligible
- Applies When Employee Needs Leave for the Following COVID-19 Related Issues:
  - School or Child-Care Closure
- Employees Entitled to 12-Weeks of Leave
  - First Two-Weeks (2) May Consist of Unpaid Leave (Subject to Other Leave Benefits That Employee May Elect to Utilize)
  - Full-Time Employee Must Then Be Paid Two-Thirds (2/3) of Their Regular Rate Pay
  - Limits Capped at \$200 Per Employee Per Day OR \$10,000 Aggregated
- Possible Exemption for Employers with Fewer Than 50 Employees (Determined by the Secretary of Labor)
  - A Rulemaking Is Likely Forthcoming to Address How These Requests Will Be Handled
  - Standard: Jeopardizes the Viability of the Business as a Going Concern

### Paid Sick Leave

- Covers Employers with 500 or Fewer Employees Via Refundable Tax Credits
- Employer Must Post Notice Informing of Employee Right to Emergency Paid Sick Leave
- Employer May Not Change Current Policy in Order to Avoid New Provisions Enacted by This Law
- Employee Is Covered from the First Day of Hire
- 80-Hours Paid Sick Leave for the Following COVID-19 Related Issues (Pro Rata for Part-Time Employees)

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- Self-Isolation (Paid at Regular Rate) \*
  - Diagnosis of COVID-19 (Paid at Regular Rate)
  - Compliance with an Order to Stay Away from Work Due to Employee's Exposure to COVID-19 or Employee's Symptoms of COVID-19 (Paid at Regular Rate) \*
  - Care for Family Member Who Is Self-Isolating or Has COVID-19 (Paid at Two-Thirds [2/3] Regular Rate)\*\*
  - Care for a Child Whose School or Child Care Has Been Closed (Paid at Two-Thirds [2/3] Regular Rate)\*\*

*\*Would Cap Limits at \$511 Per Employee Per Day OR \$5,110 Aggregate*

*\*\*Would Cap Limits at \$200 Per Employee Per Day OR \$2,000 Aggregate*