



# Department of Labor Temporary Regulations around FFCRA

On April 1, 2020, in connection with the effective date of the Families First Coronavirus Response Act (FFCRA), the [DOL announced temporary regulations](#) that aim to assist employers in interpreting and implementing the emergency paid sick leave and emergency paid family and medical leave under the FFCRA. The DOL also expanded on their previous compliance assistance for employers and employees by including 19 additional questions to their list of Q&As on the FFCRA.

## DOL Temporary Rule

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Although the administrative guidance provided in the temporary rule is fairly expansive, we have highlighted a few of the more notable topics.

### SHELTER-IN-PLACE AND STAY-AT-HOME ORDERS

The DOL clarified that employees unable to work or telework due to a need for leave because the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 also includes orders that advise some or all citizens to shelter in place, stay at home, quarantine or otherwise restrict their own mobility. However, the order must *prevent* the employee from working (or teleworking) and does not necessarily mean that a business closed as a result of a shelter-in-place order is required to offer paid leave under the FFCRA. [See page 14 of the rule for examples.](#)

### ADVICE FROM HEALTH CARE PROVIDERS

The second qualifying reason for leave requires advice from a health care provider to self-quarantine due to COVID-19. The DOL explains that an employee may take paid sick leave only if the health care provider's advice is based on the provider's belief that:

- + The employee has COVID-19
- + May have COVID-19
- + Is particularly vulnerable to COVID-19

Following the advice of the health care provider to self-quarantine must prevent the employee from working or teleworking. In other words, advice given by a health care provider to the general public at large would likely not qualify.

### CARING FOR OTHER INDIVIDUALS

The fourth qualifying reason for leave states that an employee qualifies if they cannot work or telework because they are caring for an individual who has been self-quarantined due to advice from a health care provider or due to a federal, state or local order. For purposes of this section, an "individual"





means an employee's immediate family member, a person who regularly resides in the employee's home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she were quarantined or self-quarantined.

### ELECTRONIC FFCRA NOTICE

In addition to posting the FFCRA employee rights notice at the employer's worksite, an employer may distribute the notice to employees by e-mail or post the required notice electronically on an employee information website to satisfy the FFCRA requirement. The employer may also mail the notice to employees without access to electronic information at the worksite. The model notice may be found [here](#).

### REQUIRED DOCUMENTATION

The DOL temporary rule states that an employee is required to provide the employer with a signed statement containing the following information prior to taking paid sick leave or expanded family and medical leave:

- + Employee's name;
- + Date(s) for which leave is requested;
- + Qualifying reason for the leave; and
- + Oral or written statement that the employee is unable to work because of the qualified reason for leave.

Additional notice requirements will apply depending on the qualifying reason for leave, such as leave due to government order, caring for a child whose school or child care provider has closed, or following advice from a health care provider. The employer *may not* require the notice to include documentation beyond what is allowed by section 826.100.

In coordination with IRS tax credits, the employer may also request an employee to provide such additional material as needed for the employer to support a request for tax credits pursuant to the FFCRA. The employer is not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.

The DOL has provided additional detail on the documentation requirements for employers and employees in questions 15 and 16 of their [Q&A](#).



### DOL REVISED Q&A

Included below are several of the key points addressed in the addition of questions 60-79 in the updated DOL [Q&A](#).

- + Eligibility for employees who self-quarantine or who are caring for another quarantined individual;
- + Caring for children over the age of 18;
- + Whether schools and places of care "closed" for purposes of the FFCRA if they have moved to online instruction;
- + "Substantially similar conditions" as defined by HHS

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