

Families First Coronavirus Response Act: Part II

This Technical Update is intended for general informational purposes only, and readers should consult with their entity's own counsel for specific legal questions.

This Technical Update is a continuation of Technical Update vol. 24 no. 22 which address the The Families First Coronavirus Response Act (FFCRA) which went into effect April 1. The goal of this Update is to provide readers with some of the key provisions of the Act based upon guidance offered by the Department of Labor.

Unable to work or telework. The guidance states that an employee is unable to work or telework if the employer has worked for the employee, and one of the qualifying reasons under FFCRA prevents the employee from being able to perform work, either under normal circumstances at your normal worksite or by means of telework.

If an employee agrees to work their normal number of hours outside of their normally scheduled hours (such as early in the morning or late at night), then the employee is able to work, and leave is not necessary unless another COVID-19 qualifying reason prevents the employee from working that schedule.

Intermittent leave while teleworking. The guidance encourages employers to allow employees to take sick and family leave intermittently while teleworking. Employees may take intermittent leave in any increment so long as the employer agrees. By way of example, the guidance says that if you agree on a 90-minute increment, the employee could telework from 1:00-2:30 p.m., take leave from 2:30-4 p.m. and then return to teleworking.

Intermittent leave while working at a worksite. Employees who are working at their usual worksite cannot take intermittent sick leave if they are subject to a quarantine or isolation order; have been advised by a health care provider to self-quarantine; are experiencing symptoms of COVID-19 and seeking a medical diagnosis; caring for an individual who is subject to quarantine or has been advised by a health care to self-quarantine; or are experiencing any other substantially similar condition specified by the Health and Human Services. In such cases, the leave must be taken in full-day increments, and the employee must continue taking sick leave until they either use the full amount of sick leave or no longer have a qualifying reason to take the leave.

Employees taking leave to care for a child whose school

or daycare is closed are allowed to take intermittent leave if the employer agrees (e.g., work MWF at the worksite and take leave TT). The guidance encourages employers to allow this.

Closure of worksite. The guidance states that if an employer has to close their jobsite either before or after April 1 due to lack of work or because it was required to close pursuant to a Federal, State or, local directive then an employee is not entitled to paid sick or expanded family leave, but they may be eligible for unemployment.

Layoffs, furloughs, and reduction in hours. If an employee is furloughed or laid off on or after April 1 because there is not enough work for the employee to do, then the employee is not entitled to leave under FFCRA. Similarly, if an employer reduces an employee's work hours because it does not have enough work for the employee to perform, then the employee may not use emergency sick leave or expanded family leave for the hours the employee is no longer scheduled to work.

Use of expanded family leave by an employee who has already taken FMLA leave. For employers who are covered by FMLA prior to April 1, 2020, an employee can take a total of 12 workweeks for FMLA or expanded family leave during a 12 month period. If an employee has taken some but not all 12 workweeks during the current 12-month period, then they can take the remaining portion of leave available. If an employee has already taken 12 workweeks of FMLA leave, they may not take additional expanded family leave.

What this Means for Counties

The Department of Labor guidance on the FFCRA is available at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>. For more information, contact CTSI at (303) 861 0507. 

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