

New Guidance on Families First Coronavirus Relief Act

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

On April 2, 2020, the Department of Labor issued a temporary rule implementing the leave provision of the Families First Coronavirus Relief Act (FFCRA) available at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-07237.pdf>. This is the fourth piece of guidance the DOL has issued regarding the Act, which went into effect last Thursday. While the rule is generally consistent with prior guidance, there are a few important clarifications.

Effect of Stay at Home Order

For purposes of emergency sick leave, the rule now provides that being "subject to a quarantine or isolation order" does include a shelter-in-place or stay-at-home order issued by the Federal, State or local government that causes the employee to be unable to work even though the employer has work that the employee could perform but for the order. This includes when a Federal, State, or local government authority has advised categories of citizens (e.g., of certain age range or with certain medical conditions) to shelter in place, stay at home, isolate, or quarantine.

The rule states that an employee may take emergency sick leave "only if, but for being subject to the order, he or she would be able to perform work that is otherwise allowed or permitted by his or her Employer, either at the Employee's normal workplace or by Telework." An employee subject to a quarantine or isolation order may not take emergency paid sick leave where the employer does not have work for the employee as a result of the order or other circumstances.

The DOL provides the following example to illustrate this rule: If a coffee shop closes temporarily or indefinitely due to a downturn in business related to COVID-19, it would no longer have any work for its employees. A cashier previously employed at the coffee shop who is subject to a stay-at-home order would not be able to work even if he were not required to stay at home. As such, he may not take paid sick leave because his inability to work is not due to his need to comply with the stay-at-home order, but rather due to the closure of his place of employment. This analysis holds even if the closure of the coffee shop was substantially caused by a stay-at-home order. If the coffee shop closed due to its customers being required to stay at home, the reason for the cashier being unable to work would be because those customers were subject to the stay-at-home order, not because the cashier himself was subject to the order. Similarly, if the order forced the coffee shop to close, the reason for the cashier being unable to work would be because the coffee shop was subject to the order, not because the cashier himself was subject to the order.

As applied to a local government, this means that if the govern-

ment closes a facility due to the Statewide or local Stay-at-Home Order and the government has no other work for the employees working at those facilities, then the local government is not required to provide emergency sick leave to those employees.

Documentation Required From an Employee

The rule requires an employer to provide the following information prior to taking emergency sick leave or expanded family leave:

- Employee's name;
- Date(s) for which leave is requested;
- Qualifying reason for the leave;
- Oral or written statement that the employee is unable to work because of the qualified reason for leave;
- To take emergency sick leave due to a quarantine or isolation order, an employee must additionally provide the employer with the name of the government entity that issued the quarantine or isolation order;
- To take emergency sick leave because they have been advised to self-quarantine, an employee must provide the name of the health care provider who advised the employee to self-quarantine;
- In order to take emergency sick leave to care for an individual, the employee must provide the employer with:
 - the name of the government entity that issued the quarantine or isolation order to which the individual being cared for is subject; or
 - The name of the health care provider who advised the individual being cared for to self-quarantine;
- To take emergency sick leave or emergency family leave to care for a child, the employee must provide:
 - the name of the son or daughter being cared for;
 - the name of the school, place of care, or child care provider that has closed or become unavailable;
 - a representation that no other suitable person will be caring for the son or daughter during the period for which the employee takes paid sick leave or expanded family leave.

What This Means for Counties

The COVID-19 pandemic and the government's response are a unique and fluid situation. CTSI is working hard to stay abreast of issues impacting Colorado's counties. For more information, contact CTSI at (303) 861 0507. [CTSI](#)

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