

April 1, 2020

DOL Releases FAQs on Families First Coronavirus Response Act Employer Provisions

The agency adopts an inclusive definition of “health care providers” for purposes of possible exemption from the paid sick leave and expanded family and medical leave provisions in FFCRA

The Families First Coronavirus Response Act (FFCRA) modified the Family and Medical Leave Act (FMLA) and created a new paid sick leave policy to assist workers who contract novel coronavirus (COVID-19), are caring for family members with COVID-19, or face other extenuating family circumstances, such as a lack of child care due to school closures. However, the legislation allows for exemptions for health care providers and emergency responders and directs the Secretary of Labor to promulgate regulations within 15 days of the date of effectiveness to address, among other things, the definition of “health care provider.”

The Department of Labor (DOL) March 28 released a set of [frequently asked questions](#), which included information on how it would define “health care provider” and “emergency responder” under the FFCRA policies. The definitions provided align with the [AHA request](#) that the department account for the broad range of health care workers who make care possible. In addition, the FAQs include information on:

- Treatment of prior leave entitlement, including leave provided by federal, state or local policies;
- How to calculate regular rate of pay;
- When these provisions are applicable and opportunities for exemptions;
- How to count workforce size and hours worked;
- When employees are eligible for each type of leave and how much they should expect to be paid;
- Utilization of multiemployer collective bargaining agreement; and
- The process for employees to file complaints.

SUMMARY OF KEY POINTS

Definition of Health Care Provider. Under FFCRA, employers may exempt health care providers from the new leave provisions. DOL defines “health care providers” as anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any

similar institution, employer or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

In addition, this definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities' institutions to provide services or to maintain the operation of the facility. It also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles or treatments, along with "any individual that the highest official of a state or territory determines is a health care provider necessary to respond to COVID-19."

Definition of Emergency Responder. Employers also may exempt emergency responders from the FFCRA leave provisions. DOL defines emergency responders as an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or the National Guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes "any individual that the highest official of a state or territory determines is an emergency responder necessary to respond to COVID-19."

Prior Leave Entitlements. The paid sick leave and expanded family and medical leave under the FFCRA are in addition to employees' preexisting leave entitlements, including other leave provided under federal, state or local law, a collective bargaining agreement, or a company's existing policy. Employees may choose to use their existing leave, as permissible by their employer and applicable laws, in addition to the new leave. However, the tax credits authorized through the legislation to help employers offset the cost of these provisions only would apply to the FFCRA-authorized paid sick and expanded family and medical leave provided.

Regular Rate of Pay Calculation. For purposes of the FFCRA, the regular rate of pay used to calculate paid leave is the average regular rate of pay, as defined by the [Fair Labor Standards Act](#), over a period of up to six months prior to the start date of the leave. If an employee has not worked for the full six months prior, the regular rate used to calculate the paid leave is the average of the regular rate of pay for each week worked. Commissions, tips or piece rates will be incorporated into the calculation to the same extent they are included in the calculation of the regular rate under the FLSA.

An employer also can compute this amount for each employee by adding all compensation that is part of the regular rate over the six month period, or weeks worked if less than six months of employment, and divide that sum by all hours actually worked in the same period.

Effective Date. The paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and Dec. 31, 2020.

FURTHER QUESTIONS

If you have questions, please contact AHA at 800-424-4301.