

Sweeney Mason

LLP

Coronavirus (COVID-19) Update: **U.S. Department of Labor Issues Additional Guidance on FFCRA**

On Friday, March 27, 2020, the DOL issued valuable new insight on the application of the recently enacted Families First Coronavirus Relief Act (FFCRA), available [here](#).

Overview: The FFCRA requires employers with fewer than 500 employees to provide paid sick leave and expanded family and medical leave for specified reasons related to COVID-19.

Effective Date: These provisions go into effect on April 1, 2020 and will remain in place through December 31, 2020.

Required Notice: All employers with fewer than 500 employees should **immediately** post the notice prepared by the Department of Labor and available [here](#).

Delayed Enforcement: The DOL will not bring enforcement actions against employers for violations of the FFCRA prior to April 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the FFCRA.

Administration: The new guidance from the DOL can be found in [Questions 15-37](#), but we strongly encourage employers to read the entire Q&A. Some highlights:

- Paid sick leave and paid FMLA are not available to employees with reduced hours, while on furlough, or whose workplaces are closed. See Questions 23-28.
- These leaves do not apply to employees whose workplaces are closed due to a federal, state, or local shelter-in-place or stay-at-home order, or due to business slowdowns. See Questions 23 and 27.
- These leaves, and the payroll tax credit, are not retroactive. Employees are not entitled to pay under these leaves if they were absent or out of work, for any reason, prior to April 1. See Question 13.
- Both emergency paid sick leave (EPSL) and emergency Family and Medical Leave (EFMLA) can be taken on an intermittent basis in certain situations. See Questions 20-22 for explanations about when intermittent leave is allowed.
- Employees may not be required to use other forms of paid leave prior to or concurrently with EPSL or EFMLA. See Questions 32 and 33.

Employers should keep documentation to show that employees who received leave were actually in need of leave. The documentation requirements will be outlined in soon-to-be-released IRS guidance. See Questions 15 and 16.

Sweeney Mason is available to assist our clients and community with their legally-related issues and concerns during this uncertain time. We are in daily contact with governmental offices and various trade organizations to monitor the developments surrounding the COVID-19 outbreak. At this juncture, and given the fast-paced changes to the applicable orders and mandates, there is no "one-size-fits-all" approach to COVID-19-related legal matters. Contracts, employment issues, ongoing lawsuits, and other matters impacted by the COVID-19 outbreak should be analyzed on a case-by-case basis and with the assistance of Sweeney Mason. We have listed the following links to assist you in evaluating some of the issues you may have. Stay safe!

California <https://covid19.ca.gov/stay-home-except-for-essential-needs/>

Santa Clara County <https://www.sccgov.org/sites/phd/DiseaseInformation/novel-coronavirus/Pages/frequently-asked-questions.aspx>