

Survive and Advance

Federal Law Alert - COVID-19 Legal Update

March 30, 2020

Families First Coronavirus Response Act (FFCRA)

Since the enactment of the Families First Coronavirus Response Act on March 18, new information and guidance has been released every few days, though still much slower than employers would like. We have summarized what we believe to be the most relevant new information below. We will continue to update and to keep you informed, and we encourage you to visit the Smith Brothers Insurance website as well as the ThinkHR "Comply" site regularly for updates and resources.

1. Required FFCRA Poster

The Department of Labor (DOL) has released a [mandatory employee rights poster](#) for the FFCRA. It should be posted or distributed to employees electronically (via email or online portal) by April 1. More Q&A information on the requirements can be found [here](#).

2. Enforcement of FFCRA

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 Act. You can read more about the brief non-enforcement period [here](#).

3. New Guidance from the DOL on Administering FFCRA Leaves - DOL Q&A Significantly Updated

We strongly suggest that employers read through the entire [Question and Answers document](#) prior to Wednesday, so they have an understanding of how the leaves work.

The following are some highlights from the updated guidance and client questions we received in the past week:

- These leaves (and 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 reasons) prior to April 1. See question 13.
- Employers recordkeeping and 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.
- Telecommuting Employees vs. Employees who cannot Telecommute. See questions 16-17.

- 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.
- When leaves are not available to employees with reduced hours, furloughed employees, or employees' whose workplaces are closed. See questions 23-28.
- When leaves are not available to employees whose workplaces are closed due to a federal, state, or local shelter-in-place or stay-at-home orders, or due to business slowdowns. See questions 23 and 27.
- Health Insurance Continuation Provisions under EPFL and EFMLA. See question 30.
- 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.
- Layoff and Closures while on ESPL and EFMLS. See question 43.
- Interaction between EPSL and EFMLA and traditional FMLA. See questions 44-45.
- Interplay between EPSL, EFMLA and state mandated leave provisions. See question 46.
- Definition of Health Care Workers Exempt. See question 56.
- Employers under 50 Employees Exemption. See question 58-59.

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

On Friday, March 27, the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The new law is a \$2 trillion economic stimulus package designed to repair the economic damage caused by COVID-19 and provide additional protection to individuals and businesses who may lose income due to the pandemic. While most of the act pertains to direct payments, loans and grants available to small businesses under 500 employees as well as to individuals, there are some sections that affect leave and benefit programs.

1. Providing Alternatives to Closure and Layoffs

The CARES Act gives employers the following options and benefits, which may allow them stay open and keep more people employed:

- Small businesses may be eligible for emergency grants of up to \$10,000 to cover immediate operating costs.
- The Small Business Administration (SBA) may provide loans of up to \$10 million per business; any portion of that spent to pay employees, keep workers on payroll, or pay for rent, mortgages, or existing debt could be forgiven, provided workers remain employed through the end of June.
- Small businesses with existing SBA loans may have up to six months of payments waived.
- Businesses who have experienced a decline in gross receipts of 50% as compared to the same quarter of 2019 or who have been fully or partially shutdown by order may be eligible to receive a refundable tax credit for 50% of qualified employee wages up to \$10,000 per employee. This is unrelated to the dollar-for-dollar payroll tax credit that can be taken for FFCRA leaves.
- Businesses may defer payment of employer payroll taxes imposed between the enactment of this law and December 31, 2020 with half of the deferred taxes due by December 31, 2021 and the rest due by December 31, 2022. This is unrelated to the dollar-for-dollar payroll tax credit that can be taken for FFCRA leaves.

We encourage you to follow the [IRS Coronavirus Tax Relief](#) page and the [SBA Coronavirus Loan Resources](#) page, as well as consult with your tax professional and commercial bank as to which of these programs may benefit your organization's specific situation. Detailed guidance on how to access these financial resources should be coming soon in the days ahead and we will continue to update you with a more comprehensive summary as the CARES program rolls out.

2. Impact on Unemployment Insurance

The CARES act expands unemployment benefits by 13 weeks and adds \$600 to the weekly amount an individual would usually receive. While these unemployment benefits are generous, employers should still consider their options and incentives under the CARES Act mentioned above before making decisions about reduced hours, furloughs, or layoffs.

Employees who experience reduced hours, furloughs, or layoffs should be encouraged to file for unemployment insurance as soon as possible. We recommend that both employers and employees visit their state's unemployment insurance department website, as each department is updating their rules to facilitate displaced workers during this time.

As a reminder, all Smith Brothers Employee Benefits Clients have access to our ThinkHR portal as well as our Company website where you will find resources and updates. Should you need assistance in accessing this portal please do not hesitate to your Smith Brothers Client Executive directly for help.

Please feel free to contact your Smith Brothers Employee Benefits Client Executive or our Compliance Officer, Karen Smith Wohlers, with any questions or needs.

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The foregoing has been prepared as a general overview of the subject matter covered. It is not meant to provide legal advice with respect to any specific matter and it should not be taken as legal or compliance advice. Do not take, or refrain from taking, any action on legal or compliance issues related to any employee benefit plan(s) based upon this information. Readers of this alert are encouraged to consult with their own professional counsel. Smith Brothers Insurance is not obligated to provide updates on the information presented herein.
