

Supplement to COVID-19 Federal Package and HR Implications Webinar

Correction and Additional Q&A

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Correction: Using FFCRA leave to care for son or daughter if school or place of care is closed

A correction has been issued concerning the use of FFCRA leave by an employee to care for a son or daughter under 18 years of age if the child's school or place of care has closed. One of the presenters stated that employees could use the FFCRA leave to care for a son or daughter under age 18, or a son or daughter over the age of 18 incapable of self-care. This interpretation was based on the definition of "son or daughter" used in FMLA. On further reflection, both presenters agree that the FFCRA definition of "son or daughter" appears to be more limited than FMLA and, as such, FFCRA leave to care for a son or daughter whose school or place of care has closed is only available to those with children under 18 years of age.

The FFCRA language is as follows:

“(A) QUALIFYING NEED RELATED TO A PUBLIC HEALTH EMERGENCY.—The term ‘qualifying need related to a public health emergency’, with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

Additional Q&A:

Q1: What benefits are part-time employees eligible to receive?

A: Under FFCRA, they can take emergency paid sick leave for the number of hours they average over 2 weeks, or if their hours aren't possible to estimate over a 2-week period, based on an average looking back 6 months from the first day of leave. The paid leave benefit under expanded FMLA is figured in the same way. (Chris Johnson)

A: See question 4. (Joanie Winters)

Q2: Will there be an exception to PPACA if part-time employees work more than 30 hours during the pandemic?

A: There could be, but there is not any exception right now that I am aware of. I have seen a proposed appropriations bill that would make some allowances under PPACA, but I haven't studied it, and I would not count on it. (Chris Johnson)

A: We haven't been told of any exception to PPACA just yet. That's not to say one isn't coming. (Joanie Winters)

Q3: If the County elects to pay employees when they are out of work without using their accrued leave, is there a reason(s) to document compliance for Federal Paid Sick Leave and Expanded FMLA?

A: Yes, to be able to show the paid leave you provided at least equaled the requirements of the law. Employees are also still entitled to notice of the law by way of the poster. Documenting compliance may be as simple as tracking the paid leave the county gave each employee and maintaining some documentation of why it was provided. Keep in mind that if the law is corrected in the future to allow public employers to take the tax credit for paying emergency paid sick leave and expanded FMLA, you may not be able to claim it without documentation. (Chris Johnson)

A: I would recommend documentation as long as the employee qualifies for the Paid Sick Leave or FMLA. This is an ever-changing dynamic and right now, counties are exempt from the credit. That could change and if it does, you will have to have the records needed to get reimbursed for qualified time paid. (Joanie Winters)

Q4: Is the COVID-19 FMLA Expansion only for full-time employees? I know the sick leave part of the act is for full-time and part-time, but I'm not clear on PT for the FMLA portion.

A: No, it is for part-time employees too. (Chris Johnson)

A: I believe that it does apply to PT. There is no specific mention in the Act itself but the Department of Labor guidelines indicate where an employee's schedule varies week to week to such an extent that an employer is not able to determine the number of hours, then the employer may compute pay per day of expanded family and medical leave based on the average number of hours the employee was scheduled per day over the six-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type. (Joanie Winters)

Q5: If the employee has been placed on a modified work schedule, should the leave only be applied to the scheduled workdays or to the entire work week?

A: I'd need to know how it was modified. For example, if you cut the employee's hours due to lack of work, and the employee became qualified for leave under emergency paid sick leave or expanded FMLA, then I think he or she would be entitled to pay based on the modified hours. I don't think the law was meant to give an employee a windfall for taking leave. (Chris Johnson)

A: Remember that the employee must be eligible for the Emergency Paid Sick Leave and so if the County has modified the work schedule and the employee does not meet one of the six reasons for the Emergency Paid Sick Leave, the paid leave does not apply. The employee could file a claim for unemployment benefits for the reduced hours. (Joanie Winters)