



CCM COVID-19 ALERT

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Department of Labor “Posting” Requirement for Paid Leave - May Require Distributing Notice Electronically

The Families First Coronavirus Response Act (or, FFCRA) was the first legislation designed to provide employees with enhanced benefits caused by the COVID-19 outbreak. As many employers are now learning, the FFCRA contains two important provisions regarding paid sick time and expanded (and partially paid) family and medical leave.

Many private employers now must provide up to 80 hours of paid sick leave (subject to caps) for employees unable to work or telework because of an isolation order, a quarantine advisory from a medical professional, or because the employee experiences COVID-19 symptoms. Separately the FFCRA requires what amounts to an extension of family and medical leave at two-thirds pay (again subject to caps) if an employee cannot work or telework because he or she is caring for an individual that has been advised to self-isolate or is caring for a child unable to attend school because of a closure order. Because so many states and municipalities now have implemented stay-at-home or shelter-in-place directives, a broad swath of employees potentially have extended family leave benefits available to them.

The FFCRA, at Section 5103, initially said that employers must post notices in the workplace of employee rights under the new law. Consistent with similar federal statutes, Section 5103 said that employers must “post and keep

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posted, in conspicuous places on the premises of the employer" the new paid leave requirements.

For employers with remote workforces, the posting requirement was an obvious poor fit because it would provide no notice whatsoever. In keeping with the social policy and intent of the FFCRA, the Department of Labor has now clarified the FFCRA through interpretive regulations. The temporary rule now provides that employers may distribute a poster via email to their employees. The DOL also has provided a sample poster that satisfies the notice requirements.

The interpretive rule the DOL has provided is not technically binding on the courts and seems inconsistent with the FFCRA's plain language. However, despite this, employers with remote workforces should be distributing the paid leave and family leave notice electronically to comply with the spirit of the statute.

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