

DOL Issues Further Q&A Guidance

After publishing a temporary rule on Friday, April 3, 2020, the DOL issued additional question and answer guidance over the weekend further clarifying the rules concerning paid leave available under the Families First Coronavirus Response Act (the “Act”).

Below are some of the key points to keep in mind when administering the leave requirements:

- An employee is not eligible for paid sick leave or expanded family and medical leave if the employee is receiving workers’ compensation or temporary disability benefits.
- An employee may not take paid sick leave under the Act if he or she unilaterally decides to self-quarantine for an illness without medical advice, even if the employee has COVID-19 symptoms.
- An employee may take paid sick leave to care for a self-quarantining individual (immediate family member or residing in the same home) if a health care provider has advised that individual to stay home or otherwise quarantine him or herself because he or she may have COVID-19 or is particularly vulnerable to COVID-19 and provision of care to that individual prevents the employee from working (or teleworking). Paid sick leave under the Act is not available to care for someone who does not expect or depend on the employee’s care during his or her quarantine or self-quarantine due to COVID-19.

- If a child’s school or place of care has moved to online instruction or to another model in which children are expected or required to complete assignments at home, it is still “closed” for purposes of the Act.
- School closure and loss of child care paid leave is only available to care for an employee’s own children, not for the care of other’s children.
- Only one guardian can take paid sick leave or expanded family and medical leave to care for their child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, and such leave is not available if there is another suitable adult in the home that can care for the child.
- The healthcare provider exemption is optional and the DOL encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the Act. Health care employers must still post the DOL required notice of employee rights poster.
- Employers can document an employee’s eligibility for the sick leave or family leave by receiving a written (or oral) request from the employee that includes the following:
 1. the employee’s name;
 2. the date or dates for which leave is requested;
 3. a statement of the COVID-19 related reason the employee is requesting leave and written support for such reason, including one or more of the following:
 - a. the name of the governmental entity ordering or health care provider advising self-quarantine; or
 - b. the name of the individual and relation to the employee that is depending upon the employee for care during quarantine or illness; or

- c. the name and age of child(ren) to be cared for, the name of school or place of care that has closed, and a representation that no other person will be providing care during the leave.
- 4. a statement that the employee is unable to work, including by means of telework, for such reason.

As always, if you have any questions about the administration of paid leave required by the Act contact the attorneys at Wegman Hessler for further guidance.