

NIESAR & VESTAL LLP

Law Alert

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Complying with the FFCRA employer obligations related to COVID-19

On March 18, 2020, the President signed into law the Families First Coronavirus Response Act (“FFCRA” or the “Act”).

The Act applies to all employers having fewer than 500 employees as well as government employers with limited exceptions. It imposes significant obligations on employers related to COVID-19.

The Act provides for paid leave for certain Coronavirus-related reasons at rates defined by the Act. Such reasons include being subject to a quarantine order or caring for a family member under such an order, seeking a diagnosis of COVID-19, or caring for a child whose school or place of care is closed due to Coronavirus-related reasons. Covered employers also must provide eligible employees with partially paid FMLA leave when needed.

Employees are eligible for up to two weeks, or 10 days, of paid sick leave, subject to an 80-hour cap for full-time employees. After taking two weeks paid sick leave, employees who have been employed for at least 30 days may be eligible for up to an additional 10 weeks of paid leave when an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Employers will receive a payroll tax credit intended to offset wages paid under this Act.

Businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

On March 24, 2020, the U.S. Department of Labor’s Wage and Hour Division (“WHD”) published initial guidance on the FFCRA. The WHD released a Questions and Answers on the FFCRA, as well as a Fact Sheet for Employers and a Fact Sheet for Employees on the Act. You can access the latest versions here: <https://www.dol.gov/agencies/whd/pandemic>.

The Act will apply to leave taken between April 1, 2020 and December 31, 2020. WHD’s guidance specifies that the Act’s provisions are not retroactive. Thus, any paid leave granted by an employer prior to April 1, even if for a covered reason under the Act or in an effort to comply with the Act, does not count towards an employer’s obligations to offer paid leave under the Act. Thus, it does not reduce the amount of paid sick leave otherwise available to an employee under the FFCRA.

WHD also released a model notice that covered employers must post before April 1. It also issued Frequently Asked Questions regarding the notice requirements. The law requires covered employers to post the FFCRA notice in “conspicuous places” on its premises. WHD’s guidance clarifies that an employer may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website. This clarification is particularly useful considering that a lot of employers have a significant portion of their workforce presently working remotely.

If you have any questions regarding the Act or its application, please feel free to contact Carolina Aricu (caricu@nvlawllp.com).

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