

Electronic Alert

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Additional Guidance From the DOL on FFCRA Leave & New Leave for Oregon Employees Affected by COVID-19

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New DOL FFCRA Resources

The U.S. Department of Labor (“DOL”) recently created a tool to help employees determine leave eligibility under the Families First Coronavirus Response Act (“FFCRA”), and it is in the process of creating a similar tool for employers.

In the meantime, the DOL released a new factsheet for employers that provides additional guidance for when employers are required to provide employees with paid sick leave or expanded family and medical leave for reasons related to COVID-19. Under the FFCRA, employers shall provide employees paid sick time to the extent that the employee is unable to work or telework due to a need for leave because the employee:

- (1) is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- (2) has been advised by a health care provider to self-quarantine related to COVID-19;
- (3) is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- (4) is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- (5) is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
- (6) is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

According to the factsheet, employees qualify for expanded family leave if the employee is caring for a child whose school or place of care is closed because of COVID-19-related reasons.

The factsheet also provides that under provisions (1)–(4) and (6), full-time employees are eligible for up to 80 hours of leave, and part-time employees are eligible for leave based on an average of the hours worked over a two-week period (it is unclear what two week period the DOL is referring to). Under provision (5), full-time employees are eligible for up to 12 weeks of leave at 40 hours per week and part-time employees are eligible for the number of hours they would have worked on average over the same 12-week period.

In addition, the factsheet includes a provision on calculating employees’ pay, a disclaimer about employers’ posting requirements, a prohibition on discrimination against employees who utilize leave under the FFCRA, and last, but not least, a provision on penalties and enforcement under both the Fair Labor Standards Act (FLSA) and the Family Medical Leave Act (FMLA).

Other Forms of Protected Leave

In addition to verifying employees' FFCRA eligibility, employers should also be mindful of the other forms of employee protected leave:

- **Oregon Paid Sick Leave:** OPSL is unchanged since the coronavirus pandemic began. Employees are entitled to one hour of protected paid sick leave for every 30 hours worked up to 40 hours per year. Employees who are eligible for unpaid or reduced pay pursuant to FFCRA may use OPSL to supplement pay during a qualifying absence but should not be required to do so by their employer.
- **Oregon Family Leave Act:** OFLA generally provides employees who work for employers with 25 or more employees with up to 12 weeks (in some cases more) of unpaid, job-protected leave for certain medical and family related issues, including for their own serious health condition or to care for a family member with a serious health condition. A temporary rule currently effective through September 13, 2020, but which may be extended, allows employees to use OFLA sick child leave to care for children whose school or place of care are closed by order of a public official during the pandemic. For more information regarding OFLA sick child leave, please reference our [July 1 E-Alert](#).
- **Family Medical Leave Act:** FMLA provides job-protected, unpaid leave that is similar to OFLA, but applies to employers who have 50 or more employees. While FMLA generally runs concurrently with FFCRA leave, employees may access unused FMLA leave for ongoing absences not covered by emergency paid sick leave or for non-COVID-19 serious health conditions and parental leave. For more information regarding FMLA, please refer to the [DOL's factsheet](#).

Further FFCRA-Related Economic Support to Come

Meanwhile, Oregon employers may need to juggle additional forms of leave that are available for employees. The Oregon Legislative Emergency Board [recently authorized](#) the distribution of up to \$30 million in Family First Coronavirus Response Act (FFCRA) funds to create a leave bank for employees who are below certain income thresholds. The details are yet to be released, but it is anticipated that employees who did not qualify for the earlier FFCRA leave—including employees at companies with more than 500 or more employees—may be able to draw up to \$120 per day from this fund if they are not reporting to work because they are exhibiting COVID-19 symptoms or because they came into contact with an infected person. This proposal and both the federal and state COVID-19-related leave programs are temporary, but they may be extended or additional laws or guidance may change—this is especially true as the school year approaches.

For questions related to FFCRA leave eligibility or other leave administration, contact Heather Fossity at 503-276-2151 or hfossity@barran.com.