

## Employment Law *Trending Now*

# Another Day of Shelter-in-Place, Another Day Filled With More DOL Guidance on the FFCRA

**O**n April 3, 2020, the Department of Labor (DOL) published yet another round of guidance on the Families First Coronavirus Response Act ("FFCRA"). [See Q & A 60-79 HERE](#). The DOL answered several pressing questions, such as when an employee is entitled to sick leave due to shelter-in-place order and whether an employee is entitled to leave to care for a child when another caregiver, such as a co-parent, is available to care for the child. Below is a summary of some of the key points gleaned from the guidance.

- 1. When is an employee qualified to receive sick pay under the FFCRA due to a federal, state or local isolation or quarantine order? (Q & A #60).** First and foremost, the DOL has stated that shelter-in-place or stay-at-home orders are considered isolation or quarantine orders under the FFCRA. This is contrary to what some commentators originally believed when the FFCRA was enacted. With that being said, even where an employee is subject to a shelter-in-place order, the employee may not take leave if the employer does not have work for the employee to perform (whether in-person work or telework) due to the shelter-in-place or stay-at-home order. So, if an employer has closed its operations due to COVID-19 and there is no work to perform, the employee would not be entitled to sick leave.
- 2. When is an employee eligible for sick leave to self-quarantine? (Q & A #61-62).** Many employers have questioned whether an employee

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actually needs a recommendation from a healthcare provider to self-quarantine to be entitled to sick leave, or if simply exhibiting symptoms consistent with COVID-19 without a recommendation is sufficient. The DOL clarified that, in order to be entitled to paid sick leave, the employee must have been directed or recommended to quarantine because of a belief that the employee has COVID-19 or is particularly vulnerable to the virus and, by quarantining, the employee is unable to work or telework. The employee may not take paid sick leave under the FFCRA if they unilaterally decide to self-quarantine for an illness without medical advice, even if they have COVID-19 symptoms.

- 3. Is an employee entitled to sick or FMLA leave under the FFCRA if their child’s place of care or childcare provider is not available due to COVID-10 and the employee’s spouse is able to care for the child, at least in part? (Q & A #69, 20).** We have received several questions from employers as to whether they must pay leave benefits to an employee to care for a child when that employee’s spouse is also home and can care for the child as well. The DOL guidance suggests that an employee is only entitled to sick or FMLA leave under this circumstance during the time that the employee cannot work or telework because they are actually caring for a child. To the extent parents, or other caretakers, care for the child at other times, and the employee is able to work or telework during those times, the employee would not be entitled to leave. During the periods of time when the employee is caring for the child and cannot work, the DOL suggests that intermittent sick or FMLA leave might be appropriate. Note, however, that the FFCRA does not require intermittent leave, but such leave may be permitted where agreed to by the employee and employer.
- 4. What is a “place of care” or “childcare provider” for purposes of determining an employee’s eligibility for sick or FMLA leave to care for a child whose place of care or childcare provider is unavailable due to COVID-19? (Q & A #67-68).** A “place of care” is a physical location in which care is provided for an employee’s child, such as day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs. A “child care provider” is someone who cares for an employee’s child, such as nannies, au pairs and babysitters. It also includes individuals who provide child care at no cost and without a license on a regular basis; for example, grandparents, aunts, uncles or neighbors.
- 5. May an employee take sick leave under the FFCRA to care for a child other than the employee’s child? (Q & A #71).** Maybe. While the employee would not qualify for sick leave to care for a child whose school or place of care is closed due to COVID-19 (because the child is not the employee’s son or daughter), the employee could qualify for sick leave if the child is subject to federal, state or local isolation or quarantine order, or recommendation to self-quarantine by a healthcare provider, and the employee cannot work or telework as a result of providing care.
- 6. Similarly, may an employee take FMLA leave under the FFCRA to care for a child other than the employee’s child? (Q & A #72).** No. The sole basis for eligibility for FMLA leave under the FFCRA is to care for a child – defined as a son or daughter – whose school or place of care is closed due to COVID-19. If a child is not an employee’s son or daughter, the employee would not qualify.

7. **Can an employee receive sick or FMLA leave benefits if they are receiving workers' compensation or temporary disability benefits? (Q & A #76).** In general, no. If an employee is receiving worker's compensation or disability benefits, it typically means that the employee is not able to work. Under those circumstances, if an employee was not working before they took leave, they would not be entitled to leave under the FFCRA. If, however, an employee was on light duty before seeking leave under the FFCRA, they may qualify.
  
8. **Can an employee take sick and FMLA leave under the FFCRA if they are on an employer-approved leave of absence? (Q & A #77).** The DOL suggests that, if the leave of absence is voluntary, the employee may end the leave of absence and immediately begin taking leave under the FFCRA if a qualifying reason prevents the employee from being able to work (or telework). However, the employee may not take leave under the FFCRA if the leave of absence is mandatory, such as for military or certain medical issues. This is because it is the mandatory leave of absence—and not a qualifying reason for leave—that prevents the employee from being able to work (or telework)

*If you have any questions about this Alert, or if you would like assistance in complying with the Act, please contact the author listed below or the [Aronberg Goldgehn attorney](#) with whom you work.*

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