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## **DOL ISSUES UPDATED GUIDANCE ON EMERGENCY LEAVE**

Yesterday, the Department of Labor issued updated guidance on a variety of questions which have arisen in days since adoption of the Families First Coronavirus Response Act. The updated guidance is now available on [DOL's website](#). Of most interest to employers, DOL addressed whether intermittent leave will be available for different forms of leave, whether laid off/furloughed employees will be eligible for emergency leave under the Act, and what documentation will be required.

### **INTERMITTENT LEAVE**

In addressing the availability of intermittent leave, DOL distinguished between employees working from home (telework) and employees who work at a worksite. They expressed concern that an employee who may be infected should not be at the worksite intermittently. In both cases, intermittent leave is only available if both the employer and employee agree.

For employees working from home, DOL explained that the employer and employee could agree on intermittent leave (both Sick and FMLA) and could choose any increment they agreed upon. This applies regardless of the reason for the leave.

For employee working at the worksite, intermittent leave is only available if the reason for leave is to care for a child whose school is closed and only if the employee and employer agree. All other leave must be taken continuously until the leave ends.

### **LAI D OFF/FURLOUGHED EMPLOYEES**

Many employers have asked whether employees who are laid off or furloughed would be eligible for emergency leave under either provision (sick pay or FMLA). The simple answer is no. If an employee is not working due to a government order or other closure of the employer's business or because there is no work available for the employee, the employee will not be eligible for emergency leave of either type.

### **DOCUMENTATION**

Not only does the guidance say that employers can request documentation to support an employee's request for leave, it states that documentation will be required to justify requests for the tax credits available to employers:

## **What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?**

If one of your employees takes paid sick leave under the Emergency Paid Sick Leave Act, you must require your employee to provide you with appropriate documentation in support of the reason for the leave, including: the employee's name, qualifying reason for requesting leave, statement that the employee is unable to work, including telework, for that reason, and the date(s) for which leave is requested. Documentation of the reason for the leave will also be necessary, such as the source of any quarantine or isolation order, or the name of the health care provider who has advised you to self-quarantine. For example, this documentation may include a copy of the Federal, State or local quarantine or isolation order related to COVID-19 applicable to the employee or written documentation by a health care provider advising the employee to self-quarantine due to concerns related to COVID-19. If you intend to claim a tax credit under the FFCRA for your payment of the sick leave wages, you should retain this documentation in your records. You should consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit.

If one of your employees takes expanded family and medical leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19, under the Emergency Family and Medical Leave Expansion Act, you must require your employee to provide you with appropriate documentation in support of such leave, just as you would for conventional FMLA leave requests. For example, this could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or childcare provider. This requirement also applies when the first two weeks of unpaid leave run concurrently with paid sick leave taken for the same reason. If you intend to claim a tax credit under the FFCRA for the expanded family and medical leave, you should retain this documentation in your records. You should consult IRS applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit.

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