

DOL Releases Field Assistance Guidance for Temporary Nonenforcement Period and FFCRA Notices for Employers

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On March 26, 2020, the U.S. Department of Labor's (DOL) announced the issuance of additional guidance related to the [Families First Coronavirus Response Act](#) (FFCRA). The guidance includes "[Field Assistance Bulletin 2020-1: Temporary Non-Enforcement Period Applicable to the Families First Coronavirus Response Act](#)" and model notices "for employers obligated to inform employees about their rights under this new law."

The FFCRA Field Assistance Bulletin

The bulletin is designed to provide guidance to the DOL's Wage and Hour Division field staff regarding the temporary nonenforcement period applicable to the FFCRA. The key provisions are set forth below.

FFCRA Nonenforcement Period (March 18, 2020 through April 17, 2020)

The DOL "will not bring enforcement actions against any public or private employer for violations of the Act occurring within 30 days of the enactment of the FFCRA ... provided that the employer has made reasonable, good faith efforts to comply with the Act." The DOL states that "for purposes of this non-enforcement position, an employer who is found to have violated the FFCRA acts 'reasonably' and 'in good faith' when all of the following facts are present":

1. "The employer remedies any violations, including by making all affected employees whole as soon as practicable. As explained in a [joint statement](#) by the [DOL], the Treasury Department and the Internal Revenue Service (IRS), issued on March 20, 2020, this program is designed to ensure that all covered employers have access to sufficient resources to pay required sick leave and family leave wages."
2. "The violations of the Act were not 'willful' based on the criteria set forth in *McLaughlin v. Richland Shoe*, 486 U.S. 128, 133 (1988) (the employer 'either knew or showed reckless disregard for the matter of whether its conduct was prohibited...')."
3. "The [DOL] receives a written commitment from the employer to comply with the Act in the future."

The DOL further states that it will exercise its enforcement authority if a public or private sector employer either:

“(i) violates the Act willfully,”

“(ii) fails to provide a written commitment to future compliance with the Act,” or

“(iii) fails to remedy the violation upon notification by [the DOL], the employee seeking payment, or a representative of that employee, including by making all affected employees whole as soon as practicable.”

Employers With Insufficient Cash Flows to Pay Leaves

“For purposes of [the DOL’s] non-enforcement policy, employers who are eligible for tax credits but who have insufficient cash flow should make payment of sick leave or family leave wages as soon as possible, but not later than seven (7) calendar days after the employer has withdrawn an amount equal to the required paid sick leave and expanded family and medical leave wages from the employer’s federal payroll tax deposits or, to the extent such deposits are not sufficient, has received a refund of the credit amount from the IRS to cover the required wages.”

Expiration of Temporary Stay of Enforcement

“After April 17, 2020, [the] limited stay of enforcement will be lifted, and the DOL will fully enforce violations of the Act, as appropriate and consistent with the law.”

FFCRA Model Notices

Section 5103 of the FFCRA’s Emergency Paid Sick Leave Act states that “each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice ... of the requirements described in this Act.” In addition, the FFCRA required the DOL to issue a model notice. Today, the DOL issued two FFCRA notices for employers:

- [Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave under The Families First Coronavirus Response Act \(FFCRA\)](#); and
- [Federal Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave under The Families First Coronavirus Response Act \(FFCRA\)](#)

The DOL also published [frequently asked questions](#) regarding the FFCRA notice. The following are key points:

- Because a majority of employees are teleworking during this pandemic, employers may satisfy the posting requirement “by emailing or direct mailing this notice to employees or posting [the] notice on an employee information internal or external website.”
- “[A]ll covered employers must post [the] notice regardless of whether their state requires greater protections. The employer must comply with both federal and state law.”

- “All employers covered by the paid sick leave and expanded family and medical leave provisions of the FFCRA (i.e., certain public sector employers and private sector employers with fewer than 500 employees) are required to post [the] notice.” This includes small businesses.
- Employers are not required to share the notice with laid-off employees or job applicants.
- Employers are required to share the notice with new hires.

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