

FFCRA

The DOL issued a guidance memo on Friday afternoon answering 20 additional questions. A link to the DOL's Q&A is here: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

The DOL's new guidance threw a curve into prior advice I and other attorneys have been giving. According to the DOL, if an employer has work for an employee to perform but the employee cannot perform the work (in person or remotely) because of a federal, state or local shelter in place order, then and only then is the employee entitled to paid sick leave because of "a federal, state or local quarantine or isolation order related to COVID-19." If employee is laid off or furloughed because the employer does not have work for the employee to perform because of a shelter in place order (in other words, the employer has closed entirely such as a gym or movie theater or partially closed like a restaurant limited to take out only), then the laid off or furloughed employee is not entitled to paid time off. The employee is limited to unemployment benefits.

Seems contrary to the spirit of the FFCRA, but who am I to second guess the wisdom of a federal agency like the DOL.

Additionally, the new DOL Q&A clarified that an employee taking leave due to COVID-19 symptoms, must actually seek a medical diagnosis – see a doctor or get a Coronavirus test – for the absence to qualify for paid leave. So apparently, if the employee tells you he feels he has Coronavirus stays home and you provide him paid sick leave, you must make sure the employee sees a medical provider if you want to take the tax break for paying for this employee's leave of absence.

Also, if an employee is taking leave because a child's day care or school is closed, the employee must show that there is no other parent or guardian or normal care giver available. This means that both parents may not stay home and care for the child out of school. However, if one parent is working remotely and can show that he/she cannot work and care for the child, then the other parent can establish that they are needed to care for the child even though the other spouse is home.

The DOL also opined that leave to care for a child due to a school or day care closure also applies to summer camps and summer enrichment programs. So guess what, employees can now use expanded FMLA leave for child care beyond May 31 when school would normally have closed anyway if they can show that their child would have been in a summer camp but for the COVID-19 issues.

Paycheck Protection Program

The Paycheck Protection Loan program is part of a coronavirus relief fund to assist small businesses hurt by the virus outbreak. Our numbers are a little stale because we last updated them Friday afternoon. But so far 1.6B has been applied for as of 12:30 pm Friday, 4/3. Banks have originated more than \$7 million in small-business loan requests as of 11am, according to a Treasury official. It has also been reported that over 257 banks across the U.S., including Bank of America, have originated 4,600 applications for Paycheck Protection Program loans. My colleagues, John Bobango and Mary Lauren Stewart, have updated their PPP program overview to provide you with easy to follow guidance on how to apply for these PPP loans. Attached is an updated overview chart to help you understand this evolving process.