



Additional COVID-19 FAQs from the DOL

The Department of Labor (“DOL”) has issued additional Frequently Asked Questions (“FAQs”) on the administration of Emergency Paid Sick Leave (“EPSL”) and Emergency Family and Medical Leave (“EFMLA”) under the Families First Coronavirus Response Act (“FFCRA”).

Background

Generally, an employer must reinstate an employee to the same position after EPSL or EFMLA. However, if an employer is concerned about an employee’s returning to work after caring for someone who may have had COVID-19, the employer may temporarily reinstate the employee to an equivalent position requiring less interaction with co-workers, or require that the employee telework. In addition, an employer may require any employee who knows he has interacted with a COVID-19-infected person to telework or take leave until he has personally tested negative for COVID-19 infection, regardless of whether he has taken any kind of leave. However, the employer may not require the employee to telework or be tested for COVID-19 simply because the employee took leave under the FFCRA.

FAQs

The FAQs also explain that employees are limited to a total of 80 hours of paid sick leave under the FFCRA. If an employee has used 80 hours of EPSL, he or she will not receive an additional 80 hours if additional leave is taken after a reinstatement from furlough.

Similarly, under the FFCRA, an employee is entitled to up to 12 weeks of EFMLA leave. Therefore, if the employee uses four weeks of that leave, when she returns from leave she will be eligible for only eight additional weeks of leave. The employee would not be entitled to additional leave beyond 12 weeks even if the reason for the employee’s need for leave has changed. The FAQs point out that the employer should treat such a request for additional leave as a new leave request and have the employee submit the appropriate documentation related to the new reason she needs additional leave. As an example of such a situation, the FAQs say the employee may have needed leave because her child’s school was closed, and then might need additional leave because her child’s summer camp is also closed due to COVID-19-related reasons.

Finally, the FAQs note that employers may not discriminate or retaliate against employees (or prospective employees) for exercising or attempting to exercise their right to take leave under the FFCRA. If an employee's need to care for his child qualifies for FFCRA leave, whether EPSL or EFMLA, he has a right to take that leave until he has exhausted all legally available leave. An employer may not use his request for leave as a negative factor in an employment decision, such as a decision as to which employees to recall from furlough.

The FAQs are available at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

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