

Department of Labor Issues First Guidance Clarifying Families First Coronavirus Response Act, Provides Model Notice

Late yesterday (March 24, 2020), the Department of Labor issued the first of its anticipated guidance concerning the paid leave obligations in the newly enacted Families First Coronavirus Response Act. While the guidance largely summarizes what we already knew about the new law, it does provide some important clarifications:

- The law becomes effective on April 1, **NOT** April 2.
- The 500-employee threshold is based on the number of employees at the time that an employee requests leave, and includes all full-time and part-time employees, employees on leave, temporary employees who are jointly employed, and day laborers supplied by a temp agency.
- Leave under the Emergency Paid Sick Leave Act taken for child care purposes runs concurrently with expanded FMLA leave (a maximum of 12 weeks of leave for child care purposes).
- Once an employee takes paid sick leave under the new law, an employer may require employees to follow reasonable notice procedures in order to continue to receive paid sick time.
- There is a 30-day temporary period of non-enforcement as long as the employer has acted reasonably and in good faith to comply with the Act. “Good faith” exists when violations are remedied and the employee is made whole as soon as practical by the employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.
- There is no guidance yet on the small business exemption, but it is “coming.”
- If an employer previously offered an employee paid leave for a reason identified in the new law, it cannot now deny an employee’s request for paid sick leave after the law becomes effective.
- The expanded sick leave and FMLA requirements are not retroactive—so the credits available under the new law, would not apply to leave taken before April 1.

DOL also issued just today its [Model Notice](#), which employers must post in a conspicuous place on premises.

Our Chambliss team continues to monitor legal developments in connection with the COVID-19 pandemic. Please contact [Jim Catanzaro](#), [Justin Furrow](#), or your relationship attorney if you have questions or need additional information.

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