

HR Heads-up

PERIODIC UPDATES ON IMPORTANT HR LEGAL ISSUES

MAY 8, 2020

DOL Releases Latest Guidance on FFCRA Leave

Despite the fact that the Families First Coronavirus Response Act (FFCRA) has been in effect since April 1, 2020, the Department of Labor (DOL) continues to release guidance on its interpretation of the law.

The full list of DOL FAQs on the FFCRA may be [found here](#).

In this latest article, we outline the most significant topics contained in FAQs #89-93. As we have previously advised, the DOL is continually updating these FAQs without advance notice. The following is a description of the DOL's FAQs as they appeared on May 7, 2020. Because the DOL's FAQ responses are subject to change, employers seeking the latest guidance on the FFCRA should consult with their attorney to ensure they are reviewing the latest and most accurate DOL guidance.

NEW REQUESTS FOR LEAVE DUE TO CHILDCARE UNAVAILABILITY

An employee is eligible for FFCRA leave if he/she is unable to work or telework because he/she is caring for the employee's son or daughter if the "school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions."

Many workplaces have rapidly shifted to teleworking, with many employees successfully teleworking for over six weeks. In question #91 of the latest guidance, the DOL addresses what employers should do if an employee who has been successfully teleworking for a period of time now requests leave due to childcare unavailability. An employer can require an employee to note any changed circumstances as part of the employee's statement explaining why he/she is not able to work or telework. However, the employer should be careful not to over-scrutinize the employee's statement unless the employer has independent evidence that the employee is making a misrepresentation in order to obtain leave.

The DOL provides the following examples as valid reasons why an employee might now request FFCRA leave:

"For example, your employee may not have been able to care effectively for the children while teleworking or, perhaps, your employee may have made the decision to take paid sick leave or expanded family and medical leave to care for the children so that the employee's spouse, who is not eligible for any type of paid leave, could work or telework."

WHAT DOCUMENTATION CAN AN EMPLOYER REQUIRE FROM AN EMPLOYEE REQUESTING LEAVE TO OBTAIN A MEDICAL DIAGNOSIS FOR COVID-19?

In question #92 of the latest guidance, the DOL states that an employer can require the employee to identify his or her symptoms and a date for a test or a doctor's appointment when an employee requests leave to obtain a medical diagnosis for COVID-19. An employer may not require the employee to provide further documentation of the need to take leave for this reason. The DOL stressed that this minimal documentation is intentional to

allow employees to take leave and slow the spread of COVID-19.

SCHOOL CLOSURES OVER THE SUMMER

In question #92 of the latest guidance, the DOL states that FFCRA leave is not available to employees solely because school is closed for summer vacation. However, an employee might be eligible for leave if the employee’s regular summer child care provider is unavailable due to a COVID-19 reason.

CONCLUSION

The DOL continues to roll out new guidance on the FFCRA. At the same time, FFCRA suits have begun being filed in court, and the DOL has begun enforcing the law against non-compliant employers. Employers need to stay on top of the latest legal developments involving the FFCRA. The Boardman Clark Labor & Employment team will continue to assist employers as this law evolves..

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