

DOL COVID-19 FAQs on the FMLA to Clarify Some Employer Concerns

The U.S. Department of Labor has updated guidance for workers and employers on the Family and Medical Leave Act (FMLA) as impacted by the COVID-19 public health emergency [DOL, COVID-19 and the Family and Medical Leave Act Questions and Answers].

Background. Effective April 1, 2020 through Dec. 31, 2020, the Families First Coronavirus Response Act (FFCRA, P.L. 116-127) requires certain employers to provide paid leave to workers who are unable to work or telework due to circumstances related to COVID-19 (Qualified Paid Leave). FFCRA offsets the costs of providing Qualified Paid Leave, up to certain amounts, with refundable tax credits against employment taxes for qualified leave wages taken beginning April 1, 2020, and ending December 31, 2020. See Payroll Guide ¶ 20,901 regarding paid sick leave and Payroll Guide ¶ 20,902 regarding paid family leave. The Consolidated Appropriations Act, 2021 (CAA, 2021) extended related tax credits for qualified paid leave, however, it did not extend the mandate to provide paid leave.

Updated FAQs.

- *Enforcement of FFCRA required leave.* The updated FAQs note that the DOL's Wage and Hour Division (WHD) will enforce FFCRA mandated leave for the effective period of April 1, 2020 through December 31, 2020 for complaints within the statute of limitations.
- *Encouraged use of alternative approaches to layoffs.* Because paid leave is no longer mandated, the FAQs encourage employers in lieu of laying off an employee who needs to take care of a sick family member that the employee seek alternatives such as telecommuting.