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DOL Provides Additional FAQs Regarding the Families First Coronavirus Response Act

Human Resources & Employment

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This week, the Department of Labor issued further clarification on the scope of FFCRA.

Household Employees May Be Covered

Household employees are covered employees under FFCRA if they are covered under the Fair Labor Standards Act (FLSA). As with the FLSA, the question is whether the employee is economically dependent on the household employer, or if the household employee is “in business for themselves.” For the latter, the DOL gives the example of a handyman, who works sporadically on a project-by-project basis, controls the manner in which he or she performs work, uses his or her own equipment, sets his or her own hours and fees, and has several customers. In contrast, a full-time nanny with no other clients is economically dependent and therefore likely a covered employee.

Joint Employment May Trigger FFCRA Coverage

Where an employee works for a staffing agency with over 500 employees, and is then placed in a role at a secondary company with fewer than 500 employees, the employee is covered under FFCRA where the secondary company “directly or indirectly exercises significant control over the terms and conditions” of the employee’s work. “To determine whether the secondary employer exercises such control, the Department of Labor would consider whether it exercises the power to hire or fire you, supervises and controls your schedule or conditions of employment, determines your rate and method of pay, and maintains your employment records. The weight given to each factor depends on how it does or does not suggest control in a particular case.” The DOL notes that the staffing agency in this scenario would be prohibited from disciplining, discharging, or otherwise interfering with their employee’s rights to take leave.

Expanded FMLA Can Be Requested at Any Time Through 2020

Employees who have been teleworking with children at home but later seek leave to care for them, are permitted to do so. The DOL states that there are legitimate reasons for making the request after having been home and working with children, including a determination by the employee that they were not able to be an effective caretaker. The DOL clarifies that employers can discipline employees who misrepresent their situation at home in order to receive paid leave.

Minimal Documentation for Minimal Spread

In order to stop the spread of COVID-19, employers are to err on the side of paid leave for employees who report symptoms. Therefore, the DOL only permits employers to inquire as to symptoms and a date for a doctor’s appointment and/or COVID-19 test. The DOL states that employers may not require a doctor’s note or similar certification that the visit actually occurred. The DOL does clarify that documentation requirements remain in effect for traditional FMLA.

School Closure Must Be COVID-19-related

Employees may not take emergency paid sick leave or expanded FMLA leave because a child's school is closed for a reason unrelated to COVID-19. FFCRA is available for school and camp closures due to COVID-19, but not due to a seasonal closure, a bankruptcy, or any other reason.