

WHD provides temporary non-enforcement safe harbor for FFCRA compliance

In Field Assistance Bulletin 2020-1, the Wage and Hour Division (WHD) has provided a temporary non-enforcement safe harbor applicable to the Families First Coronavirus Response Act (FFCRA). The FFCRA is designed to help both employers and employees by providing, for private employers, paid sick and family leave that is reimbursed through a refundable tax credit. President Trump signed the FFCRA on March 18. To provide time for employers to come into compliance with the new law, WHD will observe a temporary period of non-enforcement of the FFCRA from March 18 through April 17, 2020.

The WHD notes that it will not bring any enforcement actions against an employer during this time provided that the employer has made reasonable, good faith efforts to comply with the FFCRA. A good faith effort includes remedying any violations as soon as practicable and the violations were not “willful.” If the employer violates the FFCRA willfully, the WHD reserves its right to exercise its enforcement authority during the safe harbor period.

Additional WHD resources. The WHD has posted several documents that provide information on common issues faced by employers and employees when responding to COVID-19; the Coronavirus’ effects on wages and hours governed by the FLSA; and job-protected leave under the FMLA. The resources are available at <https://www.dol.gov/agencies/whd/pandemic>, and include:

- Families First Coronavirus Response Act: Questions and Answers
- Families First Coronavirus Response Act: Employee Paid Leave Rights
- Families First Coronavirus Response Act: Employer Paid Leave Requirements
- COVID-19 and the Fair Labor Standards Act: Questions and Answers
- COVID-19 and the Family and Medical Leave Act: Questions and Answers
- Families First Coronavirus Response Act Notice-Frequently Asked Questions
- WHD Response to COVID-19

Effective April 1. The latest compliance assistance clarifies that the paid sick leave and FMLA paid leave provisions are effective April 1, 2020—notable because the FFCRA provides that these provisions take effect “not later than 15 days after the date of enactment,” making April 2 the latest date.

DOL Coronavirus website. The DOL also is providing a wealth of employee and employer resources about COVID-19 on its dedicated website at <https://www.dol.gov/coronavirus>, including information on workplace safety; wages, hours, and leave; unemployment insurance; support for states and dislocated workers; injured federal workers; federal contractors; and foreign labor certification.

SOURCE: Field Assistance Bulletin 2020-1, March 24, 2020; <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1>